

IN THE DISTRICT COURT OF ROCK COUNTY, NEBRASKA

SANDHILLS CATTLE FEEDING, INC.,
a Nebraska corporation,
Plaintiff,

vs.

JAMES F. BAKER and MARDRIE
BAKER, husband and wife,
Defendants,

LARRY CARLSON,
Third-Party Defendant.

Case No. CI02-11

JOURNAL ENTRY ON TRIAL

DATE OF TRIAL: September 16-18, 2003.

APPEARANCES:

For plaintiff: Galen E. Stehlik with Larry Carlson, plaintiff's corporate representative.

For defendant: W. Gerald O'Kief with defendant James F. Baker and without defendant Mardrie Baker.

For third-party defendant: Galen E. Stehlik with third-party defendant.

SUBJECT: Jury Trial.

PROCEEDINGS:

Tuesday, September 16, 2003:

The clerk displayed the juror orientation video. After introductory comments, the court administered the examination oath to the jury panel. The clerk drew the names of 15 prospective jurors. The court conducted voir dire examination. During the court's examination and without objection, the court excused six prospective jurors for cause and in each instance the clerk drew a replacement name and the court examined the replacement panel member. The court admonished the panel and declared the mid-morning recess.

Following the recess, the court completed the voir dire examination. Counsel for plaintiff and third-party defendant then conducted voir dire examination. The plaintiff and

third-party defendant passed the panel for cause. Counsel for defendants then conducted voir dire examination. The defendants passed the panel for cause. Counsel for plaintiff and third-party defendant and counsel for defendants exercised peremptory challenges to the panel of 15 prospective jurors. The court administered the trial oath to and admonished the trial jury of 7 persons, consisting of:

[deleted]

The court discharged the balance of the panel and briefly paused to allow those wishing to leave an opportunity to exit. The court gave preliminary instructions to the jury. The court admonished the jury and recessed the trial for lunch.

Following the lunch recess, the jury returned. Counsel for plaintiff and third-party defendant presented an opening statement. Counsel for defendants presented an opening statement. The plaintiff and third-party defendant adduced evidence. Carmen Carpenter and Steven Stanec testified upon oath. The court admonished the jury and declared a brief recess. Following the recess, Dean Johnson and Keith Wright testified upon oath. The court admonished the jury and declared a brief recess. Following the recess, Larry Carlson testified upon oath. The plaintiff and third-party defendant rested. The court admonished the jury and excused the jury for the night. In the absence of the jury, the defendants verbally moved for a directed verdict on the plaintiff's operative petition. Counsel for defendants waived argument and counsel for plaintiff presented argument. The court denied the motion and recessed the trial for the day to resume on Wednesday, September 17, 2003, at 9:00 a.m.

Wednesday, September 17, 2003:

The trial resumed with all counsel and parties or party representatives present. The defendants adduced evidence. James F. Baker testified upon oath. At the conclusion of direct examination, the court admonished the jury and declared the mid-morning recess. After the recess, counsel resumed and concluded examination of James F. Baker. Ray Carr and Larry Baker testified upon oath. The court admonished the jury and declared a brief recess. Following the recess, counsel for defendants began reading the deposition testimony

of Douglas Stevenson, which counsel stipulated was made under oath. At the end of 14:22, the court admonished the jury and recessed the trial for lunch.

Following the lunch recess, counsel completed reading of the Stevenson deposition. The court admonished the jury and excused the jury from the courtroom. The defendants' offer of proof was considered, to which plaintiff objected. Counsel presented or waived arguments. The court sustained the objection and rejected the offer of proof. The court declared a brief recess. Following the recess, counsel read the deposition of Mark L. Bauer, which counsel stipulated was made under oath. The defendants rested.

The court admonished the jury and excused the jury from the courtroom. In the absence of the jury, the plaintiff verbally moved for a directed verdict on the plaintiff's petition and the plaintiff and third-party defendant moved for directed verdict on the defendants' counterclaim and third-party petition. Counsel for plaintiff and third-party defendant presented argument. Counsel for defendant presented argument. The court denied the motions. The jury returned.

The plaintiff and third-party defendant adduced evidence on rebuttal. Larry Carlson testified further upon oath. The plaintiff and third-party defendant rested on rebuttal. The court admonished the jury and excused the jury for the day to return at 9:00 a.m. on Thursday, September 18, 2003. The court held an informal instruction conference in the courtroom, but off the record, with both counsel.

The trial resumed with both counsel and defendant James F. Baker present, in the absence of the jury, with the presence of Larry Carlson waived. A formal instruction conference was held in open court. There were no motions at the close of all evidence. The court's proposed instructions Nos. 1 through 15, inclusive, and the proposed verdict form were considered. Neither party objected to the proposed instructions and verdict form, except defendants object to subparagraph 12B(4). Counsel waived arguments. The court overruled the objection. Neither party requested any additional requested instructions.

Without objection, the court established time limits of 30 minutes per side for closing arguments, with the limitation that no more time may be consumed in rebuttal than was

consumed in the initial portion of such party's closing argument. The time limits include all rebuttal argument time.

All counsel stipulated that counsel may be excused during jury deliberations, and that in their absence any written communication may take place between the court and the jury and further written instructions may be given, and the verdict may be received in the absence of counsel and the absence of the parties without further notice. The court approved the stipulation, but will nevertheless attempt to reach counsel in the event of questions or a verdict. The court recessed the trial pending the return of the jury at 9:00 a.m.

Thursday, September 18, 2003:

The jury returned, with all counsel and parties or party representatives present. Counsel for plaintiff and third-party defendant presented closing argument. Counsel for defendants presented closing argument. Counsel for plaintiff and third-party defendant presented rebuttal argument. The written instructions were read to the jury. The cause was submitted for commencement of deliberations at 10:42 a.m. The jury retired to the jury room.

At approximately 1:05 p.m., the court received a written communication from the jury requesting a calculator, which was duly filed by the clerk. After consulting with the court, the bailiff provided a standard electronic calculator with printing tape to the jury.

At 2:06 p.m., in the presence of defendants' counsel and defendant James Baker and in the absence of any counsel or party for plaintiff or third-party defendant, the jury returned and announced that it had reached a verdict. The clerk filed and read aloud the verdict form in open court, wherein the jury rendered its verdict for the defendants on the plaintiff's claim and for the defendants in the amount of \$3,787.19 on both the defendants' counterclaim and defendants' third-party claim. The court inquired if it was their unanimous verdict, and all seven jurors responded affirmatively by show of hands. The defendant waived further polling of the jury. The verdict was accepted by the court. The jury was discharged with the thanks of the court. Judgment will be entered on the verdict by separate writing.

ORDER:

IT IS THEREFORE ORDERED that:

1. The jury verdict is accepted and the jury is discharged with the thanks of the court.

2. Judgment will be entered on the verdict by a separate writing.

Signed at **Bassett**, Nebraska, on **September 18, 2003**;
DEEMED ENTERED upon file stamp date by court clerk.
If checked, the court clerk shall:

- Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.
- If not already done, immediately transcribe trial docket entry dictated.
Done on _____, 20____ by _____.

BY THE COURT:

William B. Cassel
District Judge

Mailed to: