

ANA D. MAJANO,

Plaintiff

v.

MILES ANTHONY DIXON, III,

Defendant

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IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

CASE NO.: 02-C-2004-97448 MT

* * * * *

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR J.N.O.V OR, IN THE ALTERNATIVE, FOR A NEW TRIAL

Miles Anthony Dixon, III, Defendant, by his undersigned counsel, hereby submits this Reply to Plaintiff's Opposition to his Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for a New Trial moves, pursuant to MD Rules 2-532 and 2-533, and as grounds therefore, states:

ARGUMENT

Defendant's Allegation of Juror Misconduct is well-substantiated

"The relevant test is: whether there is a probability of prejudice from the juror misconduct." *Harford Sands, Inc. v. Groft*, 320 Md. 136, 143 (1990). When ruling on a motion for a new trial in relation to juror misconduct, it is the function of the trial judge to evaluate the degree of probable prejudice and whether it justifies a new trial. *Wernsing v. General Motors Corporation et. al.*, 298 Md. 406,420 (1984). In this case, Juror Number two's misconduct certainly prejudiced Mr. Dixon's case.

As is stated in Defendant's Motion for a New Trial, the Court asked the following question during voir dire:

Is any member of the panel or any immediate family member an attorney, paralegal, legal secretary, court employee or otherwise connected, by either employment or profession, with the legal or judicial system?

Juror Number Two never responded to this question.¹ Plaintiff argues that since the voir dire question was in the present tense, Juror Number 2 merely answered the question asked, and improperly assumes that Juror Number Two was able, in an instant during voir dire, to parse out the language so carefully as to determine that no response was necessary. This argument misses the mark.

First, the question specifically asked whether anyone in the jury pool was "...otherwise connected, by either employment or profession, with the legal or judicial system." As an office manager for a law firm for twenty years, Juror Number Two was clearly connected with the legal system.² She had an obligation to disclose this information to the Court. Her failure to do so greatly prejudiced Mr. Dixon's case because Mr. Dixon's attorney was unable to determine any possible bias or the extent of her experience in the legal system. Moreover, Defendant's counsel was unable to determine whether Juror Number Two's experience would prevent her from reviewing the facts presented fairly and impartially without regard to her experience. Clearly, Juror Number Two did just the opposite.

Second, Juror's Number Two's experience in the legal system impacted the way in which the jury reviewed the impeachment evidence presented by Mr. Dixon.³ In this case, the jury had to consider the credibility of the parties, including whether the witness' testimony was consistent. The jury was presented with vital impeachment evidence, from Ms. Majano's Complaint and her

¹ When interviewed after trial, Juror Number Two, Ms. Leta Longo, stated that she had been an office manager of a law firm for twenty years. Plaintiff's counsel was present during this interview.

² Notably, Plaintiff's counsel does not contest the contents of the Affidavit that was attached to the Motion. Because he was present at the time of the comments, this silence is quite significant.

³ Juror Number Two told Mr. Dixon's Plaintiff's counsel she used her experience to influence the jury. Specifically she told the jury that Complaints consisted of boilerplate language where Ms. Majano would not have known what was in the Complaint and to therefore disregard the language in the Complaint. *See Exhibit 1 - Affidavit from Patricia Cleveland, Esquire.* Juror Number 2 also instructed the jury that Answers to Interrogatories are not significant because the attorney typically instructs the Plaintiff to sign the Answers without review. *Id.* Again, significantly, Plaintiff's counsel, who was present, does not contest these statements.

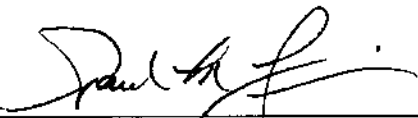
Answers to Interrogatories. However, in telling the jury that Plaintiff should not be held to her sworn statements in her discovery responses or to the facts that were pled in her Complaint, Juror Number 2 impeded the process by instructing the jury to ignore impeachment evidence. Clearly, this action prejudiced Mr. Dixon's case.

The degree of prejudice is certainly great in this case. Juror Number Two's misconduct prohibited Defendant's attorney from fully reviewing whether Juror Number Two was fit to serve on *this* jury pool and impeded the overall jury's review of Defendant's impeachment evidence. In a case such as this where the facts are directly contradictory, impeachment evidence is vital to swaying the burden of proof. Once the jury was instructed to disregard said evidence, the Defendant's case and his right to a fair and impartial jury was greatly compromised. The *only* fair way to repair the obvious damage is to grant a new trial.

CONCLUSION

For all of the aforementioned reasons, Defendant is entitled to judgment as a matter of law. The existence of juror misconduct greatly prejudiced Defendant's case and certainly entitles him to a new trial before a fair and impartial jury.

WHEREFORE, Defendant Miles Dixon, III requests that this Honorable Court set aside the jury's verdict in favor of the Plaintiff and/or grant Defendant a new trial, and grant such other relief as the Court may deem appropriate.



PAUL M. FINAMORE
Niles, Barton & Wilmer, LLP
111 South Calvert Street
Suite 1400
Baltimore, Maryland 21202
(410) 783-6300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December, 2005, copies of Defendant's Response to Plaintiff's Reply Motion For Judgment Notwithstanding The Verdict Or, In The Alternative, For A New Trial and proposed Order were mailed, first-class, postage pre-paid, to:

J. Matthew Bodman, Esquire
Miller & Zois LLC
7310 Ritchie Highway
Glen Burnie, MD 21061



PAUL M. FINAMORE

ANA D. MAJANO,

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* IN THE
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* CASE NO.: 02-C-2004-97448 MT

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ORDER

UPON CONSIDERATION of Defendant's Motion For Judgment Notwithstanding The Verdict Or, In The Alternative, For A New Trial, and any opposition thereto filed, it is on this _____ day of _____, 2005, by the Circuit Court for Anne Arundel County

ORDERED, that the Motion be and is hereby GRANTED, and it is further

ORDERED, the jury verdict entered on November 4, 2005 in favor of the Plaintiff be and is hereby VACATED, and it is further

ORDERED, that Defendant is granted a new trial.

JUDGE,
Circuit Court for Anne Arundel County

EXHIBIT 1

ANA D. MAJANO,

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Defendant

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IN THE

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CIRCUIT COURT

*

FOR

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CASE NO.: 02-C-2004-97448 MT

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AFFIDAVIT OF PATRICIA A. CLEVELAND

I, Patricia A. Cleaveland, Esquire, am competent to testify as a witness in this matter, am over the age of 18 years, and have personal knowledge of the facts as follows:

1. I am a member of the Maryland Bar and employed with Alperstein & Diener, PA located at 200 E. Lexington Street, Suite 605-610, Baltimore, MD 21202.

2. I was present at the trial for this matter held on November 3-4, 2005.

3. After the trial, I talked to Juror Number Two about her impression of the trial and the evidence presented. Plaintiff's counsel was also present during this discussion.

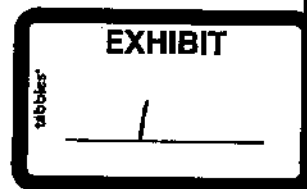
4. Juror Number Two stated that she was an office manager at a law firm for twenty years.

5. Juror Number Two stated that she knew that Pleadings are generated and filed quickly.

6. Juror Number Two stated that Interrogatories were paperwork that was handed to the Plaintiff to sign without review.

7. Juror Number Two stated that Latinos are persons who live in the same neighborhoods.

8. Juror Number Two stated that she shared all of this information with the other



Jurors during deliberation.

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON
PERSONAL KNOWLEDGE THAT THE FACTS CONTAINED HEREIN ARE TRUE.

Nov. 16, 2005
Date

Patricia A. Cleaveland
Patricia A. Cleaveland, Esquire