

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

U.S. DIAMOND & GOLD, <i>et al.</i> ,	:	CASE NO. 3:06-cv-371
	:	
	:	JUDGE THOMAS M. ROSE
Plaintiffs,	:	
	:	
vs.	:	
	:	
JULIUS KLEIN DIAMONDS LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DEFENDANT JULIUS KLEIN DIAMOND LLC’S MOTION FOR A NEW TRIAL
BASED ON INCONSISTENT INTERROGATORY ANSWERS**

Defendant Julius Klein Diamonds LLC (“JKD”) moves, pursuant to Rules 49(a) and 59(a)(1)(A) of the Federal Rules of Civil Procedure, for a New Trial Based on Inconsistent Interrogatory Answers entered by the jury.¹

Plaintiffs U.S. Diamond & Gold and John Stafford (together, “Plaintiffs”) submitted three claims to the jury. The jury returned inconsistent and contradictory answers to the interrogatories on plaintiffs’ claims. The instructions for the interrogatories were clear. However, the contradictory answers to the interrogatories themselves, combined with the fact that the jury asked a question about the interrogatories during its approximately ten hours of deliberations prior to its findings, show that the jury was confused, and a new trial must be granted.

¹ This motion is filed without prejudice to JKD’s ability to file other motions on this and other issues related to the trial and the verdict.

The new trial should be granted immediately, before the jury compounds error in this case by taking any further action, including consideration of plaintiffs' claim for punitive damages.

The grounds for this motion are set forth with more particularity in the following memorandum in support of motion.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Plaintiffs submitted three claims to the jury on November 18, 2008. After approximately seven hours of deliberations, the jury submitted a question to the Court regarding its ability to award damages on each of the claims. On November 19, 2008, after this Court answered the jury's question, and another more than three hours of additional deliberations, the jury returned answers to the interrogatories on each of plaintiffs' claims.

The answers to the interrogatories are inconsistent and contradictory. However, the jury instructions were clear and unambiguous. The answers to the interrogatories and the jury's question show that the jury was confused. This is not simply a clerical error. It is not possible for this Court to view the answers to the interrogatories in any way that avoids the conclusion that there is inconsistency. The jury's answers to the interrogatories do not present a situation where the Court can reconcile the interrogatories. Rather, the interrogatories would have to be reconciled to one another, which is not proper.

Therefore, under Rule 59(a) a new trial is the only proper pathway for this Court, and should be granted.

II. BASIS FOR A NEW TRIAL

Under plaintiffs' claims for both unjust enrichment and conversion, the jury was charged with determining the measure of damages, which was defined as "the value of the Pink Diamond when Stafford Jewelers and John Stafford sent it to JKD." (Final Jury Charge, pp. 17-18). Logically, compensatory damages, if any, should have been identical under these two claims. However, the jury answered the interrogatory for unjust enrichment with an amount of \$8,400, and the interrogatory for conversion with an amount of \$1,700,000.

Additionally, the jury entered a verdict for plaintiffs on their claim for civil liability for criminal acts in the amount of \$2,300,000 for the retail value of the Pink Diamond. However, there is no evidence to support this award, as plaintiffs presented absolutely no evidence on the retail value of the diamond.

Prior to entering the verdicts on the interrogatories, the jury submitted a question to the Court asking whether it was permitted to enter compensatory damages on each of the claims. The jury did not ask any other questions.

“Where verdicts in the same case are inconsistent on their faces, indicating that the jury was either in a state of confusion or abused its power, a motion to alter or amend a judgment, for new trial, or for relief from the judgment, if timely made, **is not discretionary**.” *Hopkins v. Coen*, 431 F.2d 1055, 1059 (6th Cir. Ky. 1970). (Emphasis added.)

Based on the question submitted by the jury and the verdicts on the interrogatories, it is clear that the jury was in a state of confusion. With regard to the claim for civil liability for criminal acts, the jury abused its power, going outside the evidence presented at trial. The three verdicts on the interrogatories are in clear conflict with one another and together are nonsensical.

It is the general rule that the granting of a new trial is a matter of discretion, and will not be reviewed. But it is not so where the verdict is inconsistent on its face and shows the abuse of power on the part of the jury. If the granting of the motion is a positive duty, it is not discretionary. If it is necessary to correct a mistrial, it becomes a positive duty to set aside the erroneous proceeding and grant a new trial.

Pugh v. Bluff City Excursion Co., 177 F. 399, 401 (6th Cir. Tenn. 1910).

The jury did not comply with the instructions of this Court. It is not possible for the inconsistent verdicts to be reconciled since the jury was confused and may have abused its power. The jury submitted one question to this Court that did not clear up its confusion. Rather than ask for additional clarification, the jury entered inconsistent verdicts which cannot be allowed to stand. Therefore, a new trial is proper.

III. CONCLUSION

There is no possible way for this Court to reconcile the answers to these interrogatories so that they are consistent. This is much more than a clerical error and this would require reconciling the interrogatories with one another. The verdicts are patently inconsistent on their

faces. Therefore, the Court should grant a new trial based upon the inconsistent interrogatory answers returned by the jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 21st day of November 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System which will send notification of such filing to counsel of record.

/s/ Stephen E. Chappellear
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