

ORIGINAL

## IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

DIRTY WORK LAWN CARE AND  
PROPERTY MAINTENANCE, LLC,

Plaintiff,

vs.

FRANKLIN BELL AND ALYSSA BELL,

Defendants.

LAW NO. LACV151168

JURY  
INSTRUCTIONS**Statement of the Case.****Members of the Jury:**

In this case, Plaintiff claims that it entered into a contract with the Defendants to remodel and reconstruct Defendants' dwelling at 2028 City View Street in Waterloo, Iowa, following fire damages to the dwelling, in exchange for monetary compensation from Defendants to the Plaintiff. Plaintiff claims that Defendants breached their contract with the Plaintiff and that Defendants have been unjustly enriched as to the remodeling and reconstruction work provided to them by the Plaintiff while failing to fully pay Plaintiff for its services rendered and expenses incurred.

Defendants deny that they had a contract with the Plaintiff, that they breached their contract with the Plaintiff and that they were unjustly enriched by receiving Plaintiff's remodeling and reconstruction services. Defendants have also counterclaimed contending that Plaintiff did breach its contract with them as to the work performed on their dwelling and that the breach of this contract caused damages to the Defendants.

Plaintiff denies Defendants' counterclaim that it breached its contract with the Defendants as to the work performed by Plaintiff on Defendants' dwelling.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

## JURY INSTRUCTION NO. 2

### **Duties Of Judge And Jury, Instructions As Whole.**

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

PROPOSED JURY INSTRUCTION NO. 3

**Burden Of Proof, Preponderance Of Evidence.**

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

## JURY INSTRUCTION NO. 4

**Evidence.**

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

## JURY INSTRUCTION NO. 5

**Deposition Testimony.**

Certain Testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

**JURY INSTRUCTION NO. 6****Interrogatories.**

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

**JURY INSTRUCTION NO. 7****Credibility Of Witnesses.**

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.



## JURY INSTRUCTION NO. 8

**Hypothetical Question, Expert Testimony.**

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.



## JURY INSTRUCTION NO. 9

**Opinion Evidence, Expert Witness.**

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

**JURY INSTRUCTION NO. 10****Statements By A Party Opponent.**

You have heard evidence claiming Jason Higham, Franklin Bell and Alyssa Bell made statements before this trial while under oath and while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if Jason Higham, Franklin Bell and Alyssa Bell had made it under oath during the trial.

If you find such a statement was made and was inconsistent with Jason Higham, Franklin Bell or Alyssa Bell 's testimony during the trial you may also use the statement as a basis for disregarding all or any part of their testimony during the trial, but you are not required to do so. You should not disregard Jason Higham's, Franklin Bell's or Alyssa Bell's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

## JURY INSTRUCTION NO. 11

**Corporate Party.**

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

## JURY INSTRUCTION NO. 12

**Cautionary Instruction - Juror's Notes.**

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

**JURY INSTRUCTION NO. 13****Use of Electronic Devices.**

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use internet or application-based maps or programs, or any other application, program, or device to search for or view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

It is important that we have your full and undivided attention during this trial.

**JURY INSTRUCTION NO. 14****Essentials for Recovery.**

Plaintiff must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. The plaintiff has done what the contract requires or has been excused from doing some of what the contract requires as explained in Instruction(s) Nos. 20, 21 and 22.
6. The defendants have breached the contract.
7. The amount of any damage defendants have caused.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

JURY INSTRUCTION NO. 15

**Competency.**

A person is capable of making a contract unless the person lacked sufficient mental capacity to understand it.



**JURY INSTRUCTION NO. 16****Existence Of A Contract.**

The existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances.

## JURY INSTRUCTION NO. 17

**Consideration.**

"Consideration" is either a benefit given or to be given to the person who makes the promise or a detriment experienced or to be experienced by the person to whom the promise is made. Where the contract provides for mutual promises, each promise is a consideration for the other promise.

**JURY INSTRUCTION NO. 18****Terms - Interpretation.**

In determining the terms of the contract you may consider the following:

1. The intent of the parties along with a reasonable application of the surrounding circumstances.
2. The intent expressed in the language used prevails over any secret intention of either party.
3. The intent may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.
4. You must attempt to give meaning to all language of a contract. Because an agreement is to be interpreted as a whole, assume that all of the language is necessary. An interpretation which gives a reasonable, effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless.
5. The meaning of a contract is the interpretation a reasonable person would give it if they were acquainted with the circumstances both before and at the time the contract was made.
6. Ambiguous language in a written contract is interpreted against the party who selected it.
7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

JURY INSTRUCTION NO. 19

**Breach - Definition.**

A breach of the contract occurs when a party fails to perform a term of the contract.

**JURY INSTRUCTION NO. 20****Performance By Plaintiff.**

When a person agrees to do something for a specified consideration to be received after full performance, they are not entitled to any part of the consideration until they have performed as agreed unless full performance has been excused, waived or prevented by the act of the other party.

However, a plaintiff who has not fully performed under the terms of the contract may still recover some amount if the failure to render performance due at an earlier time was not material, subject to defendants' claim for partial breach. In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

1. The extent to which defendant will be deprived of the benefit which defendant reasonably expected.
2. The extent to which defendant can be adequately compensated for the part of that benefit of which defendant will be deprived.
3. The extent to which plaintiff will suffer forfeiture.
4. The likelihood that plaintiff will cure the failure, taking account of all the circumstances including any reasonable assurances.
5. The extent to which the behavior of the plaintiff is in line with standards of good faith and fair dealing.

**JURY INSTRUCTION NO. 21****Impossibility Of Performance.**

Impossibility of performance means extraordinary circumstances which:

1. Prevent a person from carrying out the terms of the contract.
2. Could not reasonably have been anticipated; and
3. Are not the fault of that party.

Performance is not excused if the party who promised to perform created the circumstances which made performance impossible, or just because performance became economically burdensome or unattractive.

JURY INSTRUCTION NO. 22

**Prevention Of Performance.**

Performance is excused if the other party prevents it or makes it impossible.



JURY INSTRUCTION NO. 23

**Definition - Implied Contract.**

The law implies a promise to pay the reasonable value of services and materials a person knowingly accepts from another.

**JURY INSTRUCTION NO. 24****Definition - Implied Contract As To Compensation.**

When a person employs someone to provide services and materials without agreeing on the amount of pay, an agreement is implied to pay the reasonable value of those services and materials.

## JURY INSTRUCTION NO. 25

Essentials for Recovery for Unjust Enrichment Claim.

As to Plaintiff's claim against Defendants for unjust enrichment, Plaintiff must prove all of the following propositions:

1. Defendants were benefitted or enriched.
2. Plaintiff's services and incurred expenses caused the Defendants' benefits and enrichment.
3. Under the circumstances, it is unjust for Defendants to retain the benefits and enrichment without compensating Plaintiff for its services and expenses incurred.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages as to its unjust enrichment claim. If the Plaintiff has proved all of these propositions, then the Plaintiff is entitled to damages in some amount.

**JURY INSTRUCTION NO. 26****Breach Of Contract.**

The measure of damages for breach of a contract or unjust enrichment is an amount that would place Plaintiff in as good a position as it would have enjoyed if the contract had been performed.

The damages you award for breach of contract must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract.

In your consideration of the damages, you may consider the following:

Amount to compensate Plaintiff for services rendered and expenses incurred for work performed.

**JURY INSTRUCTION NO. 27****Essentials for Recovery.**

As to their Counterclaim, defendants must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. The defendants have done what the contract requires.
6. The plaintiff has breached the contract.
7. The amount of any damage plaintiff has caused.

If the defendants have failed to prove any of these propositions, the defendants are not entitled to damages. If the defendants have proved all of these propositions, the defendants are entitled to damages in some amount.

## JURY INSTRUCTION NO. 28

**Breach Of Contract.**

The measure of damages for breach of a contract is an amount that would place the Defendants in as good a position as they would have enjoyed if the contract had been performed by the Plaintiff.

The damages you award for breach of contract must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract.

In your consideration of the damages, you may consider the following:

Amount to compensate Defendants for expenses incurred to repair or remedy deficient construction work provided by Plaintiff.

**JURY INSTRUCTION NO. 29****Quotient Verdict.**

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.



**JURY INSTRUCTION NO. 30****General Instruction To Jury.**

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

## JURY INSTRUCTION NO. 31

**Return Of Verdict - Forms Of Verdict.**

I am giving you 1 verdict form and questions. During the first three hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict form and answers to questions must be signed by your foreman or forewoman.

After deliberating for three hours from 3:17 o'clock p.m. excluding meals or recesses outside your jury room, then it is necessary that only five of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all five jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Court Attendant.