

IN THE DISTRICT COURT IN AND FOR DELAWARE COUNTY

DIANE SANDS, Plaintiff, Vs. KROGMANN CONSTRUCTION, INC., And AL KROGMANN, Defendants.	Case No. 01281 EQCV009164 JURY INSTRUCTIONS
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STATEMENT OF THE CASE**Ladies and Gentlemen of the Jury:**

Plaintiff Diane Sands and Defendants Krogmann Construction, Inc. and Al Krogmann entered into a construction contract in the spring of 2021 wherein the Defendants were to build a house for Sands.

Sands claims that Defendants breached the contract by failing to exercise reasonable care in the construction of the house, by failing to provide all materials and labor required under the contract, and by failing to conform to the implied warranty of workmanlike construction.

Defendants filed a counterclaim against Sands asserting that she has failed to pay the full amount due under the terms of the contract. Sands admits that she has not paid the full balance and denies that it is due.

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.

INSTRUCTION NO. 1

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.

INSTRUCTION NO. 2

Unless the Court instructs you to the contrary, 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.

INSTRUCTION NO. 3

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.

INSTRUCTION NO. 4

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.

INSTRUCTION NO. 5

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.

INSTRUCTION NO. 6

You have heard evidence claiming one or more parties made statements before this trial while not under oath.

If you find such statements were made, you may regard the statement as evidence in this case the same as if the party had made them under oath during the trial.

If you find such statements were made and were inconsistent with trial testimony during the trial you may also use the statement as a basis for disregarding all or any part of testimony during the trial but you are not required to do so. You should not disregard testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 7

The fact that Krogmann Construction, Inc. 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.

INSTRUCTION NO. 8

You have heard evidence claiming a witness has a reputation or character trait for not telling the truth. You may use that evidence only to help you decide whether to believe the witness and how much weight to give their testimony.

INSTRUCTION NO. 9

You have heard evidence claiming that Diane Sands was convicted of a crime.

You may use that evidence only to help you decide whether to believe Ms. Sands and how much weight to give her testimony.

INSTRUCTION NO. 10

In a construction contract, the law implies a contract term that the work will be done in a good and “workmanlike manner”.

“Workmanlike manner” does not require that the work be perfect or free from all possible faults. It does, however, require that the builder exercise that skill, diligence, care, and learning that is usually employed by other such workmen in the community.

A breach of the implied warranty is a breach of the underlying contract.

INSTRUCTION NO. 11

For the claim of breach of contract, Diane Sands must prove all of the following propositions:

1. The terms of the contract.
2. Diane Sands has done what the contract requires of her.
3. The Defendants have breached the contract.
4. The amount of any damage Defendants have caused.

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

INSTRUCTION NO. 12

For the claim of breach of contract, Krogmann Construction must prove all of the following propositions:

1. The terms of the contract.
2. Krogmann Construction has done what the contract requires of it.
3. Diane Sands has breached the contract.
4. The amount of any damage Diane Sands has caused.

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

INSTRUCTION NO. 13

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.

INSTRUCTION NO. 14

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 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 drafted it.
7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

INSTRUCTION NO. 15

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

Defendants claim some performance was excused because of prevention. Performance is excused if the other party prevents it or makes it impossible.

If the Defendants have proved prevention, then you shall find for the Defendants, with regard to that portion of the performance that was prevented.

If the Defendants have failed to prove prevention, then you shall decide whether Diane Sands is entitled to recover damages.

INSTRUCTION NO. 16

A party who has not fully performed under the terms of a contract may still recover some amount if the failure to render performance due at an earlier time was not material (subject to the other party's 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 a party will be deprived of the benefit which such reasonably expected.
2. The extent to which a party can be adequately compensated for the part of that benefit of which such party will be deprived.
3. The extent to which the party claiming breach will suffer forfeiture.
4. The likelihood that the party claiming breach will cure the failure, taking account of all the circumstances including any reasonable assurances.
5. The extent to which the behavior of the party claiming breach is in line with standards of good faith and fair dealing.

INSTRUCTION NO. 17

In assessing damages, you must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

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.

If you find that some aspect of the work, was done in a less than workmanlike manner, the measure of damages is the reasonable cost to repair the house.

When a party breaches a contract by failing to pay the contract price, the amount of damages is the amount of the unpaid contract price.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

INSTRUCTION NO. 18

If you find that both parties breached the contract and that each of them has proven damages caused by the other's breach, do not "offset" one party's damages against the other party's damages.

You should award each party the amount of their damages (if any) as shown by the evidence.

INSTRUCTION NO. 19

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.

INSTRUCTION NO. 20

The Court has not by its instructions, or by any ruling made, or by any act done, or by anything said during the trial, intended or attempted to give any intimation or opinion as to what the facts are or what the facts are not, what proof is or what proof is not or what your verdict should be.

INSTRUCTION NO. 21

Upon retiring you shall select a foreperson. It will be their 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.

INSTRUCTION NO. 22

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.

INSTRUCTION NO. 23

Occasionally, jurors want to ask a question after they begin deliberating. If that should occur, please consider the following:

1. Words not defined in these instructions should be given their ordinary meaning.
2. There will be no additional evidence and I cannot comment to you about evidence.
3. If possible, I will meet with you after you reach a verdict and answer your questions about the trial process.
4. If you ask me a question during your deliberations, your foreperson must reduce the question to writing and give it to the court attendant, who will deliver it to me. Never attempt to communicate with me by any means other than a signed writing. You are not permitted to tell me or anyone else how you stand numerically or otherwise until you have reached a unanimous verdict.

After receiving your question, I will contact the lawyers and conduct a hearing with them out of your presence. Only then will you receive a written answer. Considerable time may go by between question and answer.

If, after considering these matters, you still wish to ask a question, follow the procedure just described. Save your questions and the answer and return them with these instructions when you return your verdict.

INSTRUCTION NO. 24

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Android device or computer; the Internet, or Internet service, or any text or instant messaging service; or any Internet chat room, blog, or website such as Facebook, Instagram, Snapchat, LinkedIn, YouTube, Tik Tok, or “X”, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

This case has been 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, 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. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

The court attendant will keep your cell phones during deliberations. If the length of deliberations causes you to need to make a call regarding personal arrangements such as child care or other scheduling issues, you may make such calls when the jury takes a break and temporarily stops deliberations, but you must not discuss the case until after you have reached your verdict and I have released you from jury duty.

INSTRUCTION NO. 25

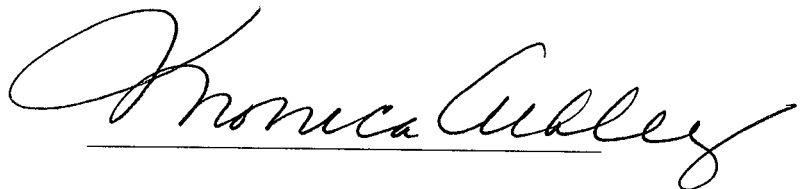
I am giving you two (2) verdict forms for the claims submitted to you.

During the first **six** hours of deliberations, excluding meals and recesses outside your jury room, your decision must be **unanimous**. If you all agree, the verdicts must be signed by your foreperson.

After deliberating for six hours from 11:22 o' clock a.m. excluding meals and recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdicts must be **signed by all seven jurors** who agree.

When you have agreed upon the verdicts and appropriately signed them, tell the Court Attendant.

Dated this 13th day of June, 2025.

A handwritten signature in black ink, reading "Monica Ackley", written over a horizontal line.

Hon. MONICA ACKLEY
District Court Judge, 1st Judicial District