

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

DENISE COLEMAN)
)
Plaintiff,)
)
vs.)
)
JARVIS PAINTING, INC., d/b/a)
JARVIS PROPERTY RESTORATION,)
)
Defendant.)
)

No. LACV093726

STATEMENT OF THE CASE
AND INSTRUCTIONS OF THE
COURT

ORIGINAL

FILED
CLERK OF DISTRICT COURT
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LINN COUNTY, IOWA

Members of the Jury:

This is a civil case brought by the plaintiff, Denise Coleman, against the defendant, Jarvis Painting, Inc., d/b/a Jarvis Property Restoration. Ms. Coleman's home was severely damaged by a fire on September 8, 2014. On the same day the parties entered into a contract for home repair services, whereby Jarvis agreed to repair the damage to Ms. Coleman's home.

Ms. Coleman has alleged that Jarvis breached the home repair contract by failing to satisfactorily perform the repairs as agreed. She seeks damages to compensate for the cost to remedy unsatisfactory repairs and to complete work left undone.

The defendant denies this claim.

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

Duties of Judge and Jury, Instructions as a 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.

INSTRUCTION NO. 2

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.

INSTRUCTION NO. 3

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.

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

Request for Admissions

The plaintiff served on the defendant a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the defendant or which they failed to deny.

INSTRUCTION NO. 5

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 witness's 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. 6

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's education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 7

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.

INSTRUCTION NO. 8

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.

INSTRUCTION NO. 9

Statements by a Party Opponent

You have heard evidence claiming a party made statements before this trial 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 that party had made it under oath during the trial.

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

INSTRUCTION NO. 10

Plaintiff's Claims Generally

The plaintiff makes two claims for the recovery of damages. She claims that the defendant breached an express warranty, as set forth in Instruction No. 14. She also claims that the defendant breached an implied warranty, as set forth in Instruction No. 18. If you find for the plaintiff on either claim, or on both claims, you must determine the amount of damages that plaintiff is entitled to recover, as set forth in Instruction No. 20. You must consider both claims.

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.

INSTRUCTION NO. 12

Insurance

Whether or not any party has insurance or other coverage has nothing whatsoever to do with the issues to be decided by the jury, and insurance is a matter the jury cannot consider. You should not speculate as to the existence, kind or amount of insurance coverage carried by either party.

INSTRUCTION NO. 13

Small Claims Case

Plaintiff has stated breach of express and implied warranty claims that are separate and distinct from the claims considered in the small claims action, and that could not have been fully and fairly adjudicated in the small claims action. The small claims procedures have no bearing on the plaintiff's claims in this case.

INSTRUCTION NO. 14

Essentials for Recovery – Express Warranty

To recover for breach of express warranty, the plaintiff must prove all of the following propositions:

1. The defendant sold home repair services and expressly warranted to repair Ms. Coleman's home "in a substantial and worker-like manner."
2. The plaintiff made the purchase relying on the express warranty.
3. The repairs to Ms. Coleman's home did not conform to the express warranty.
4. The breach of express warranty was a cause of the plaintiff's damage.
5. The amount of damage.

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

INSTRUCTION NO. 15

Express Warranty – Defined

An express warranty is any promise by a seller about a product or service which naturally or ordinarily leads the buyer to purchase the product or service, and the buyer purchases the product or service relying upon the promise.

In order for a promise to be an express warranty, no particular form of words have to be used, nor do the terms "warrant" or "guarantee" have to be used, nor does the seller have to intend to make a warranty. The warranty must relate to a fact and not an opinion about the quality or condition of the product or service sold. An expression of opinion or belief only, a statement of value, or mere words of praise do not create a warranty.

INSTRUCTION NO. 16

Reliance on Express Warranty

The fact that a buyer may, to some extent, rely upon their own judgment in purchasing the goods or services does not prevent them from also relying upon an express warranty made by the seller.

INSTRUCTION NO. 17

Breach of Express Warranty

A breach of express warranty occurs when defects are substantial and sufficiently serious so that the service fails to materially comply with the express warranty. It is not enough if the defects are small, minor or insignificant.

INSTRUCTION NO. 18

Essentials for Recovery – Implied Warranty of Workerlike Manner

To recover for breach of an implied warranty, the plaintiff must prove all of the following propositions:

1. The defendant sold home repair services and impliedly warranted that the work performed would be done in a good or workerlike manner.
2. The home repair services did not conform to the implied warranty.
3. The breach of implied warranty was the cause of the plaintiff's damage.
4. The amount of damage.

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

INSTRUCTION NO. 19

Implied Warranty of Workerlike Conduct – Defined

When a contractor agrees to build, install or perform work, there is an implied agreement that the building, installation or work performed will produce definite and certain results as expected from a skilled worker.

INSTRUCTION NO. 20

Calculation of Damages

If you find that plaintiff is entitled to damages based on either of her claims, it is your duty to determine the amount of damages. In doing so, you must consider the following:

1. The reasonable cost of correcting any defects in the defendant's performance; and
2. The reasonable cost of completing any omissions in defendant's performance.

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

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. 21

Affirmative Defenses – Waiver

Defendant claims performance was excused because of waiver.

If the defendant has proved waiver then you shall find for the defendant.

If the defendant has failed to prove waiver then you shall decide whether the plaintiff is entitled to recover damages.

INSTRUCTION NO. 22

Waiver of Performance - Defined

The right to insist on performance can be given up. This is known as a "waiver." A waiver may be shown by actions, by written agreement, or you may conclude from Denise Coleman's conduct and the surrounding circumstances that a waiver of her warranty claim(s) was/were intended. The essential elements of a waiver are the existence of a right, knowledge of that right, and an intention to give it up.

INSTRUCTION NO. 23

Duty to Mitigate Damages

Defendant claims plaintiff has failed to mitigate her damages by not undertaking certain repairs to her house after Jarvis left the job. Plaintiff has a duty to exercise ordinary care to reduce, minimize or limit her damages. However, plaintiff has no duty to do something that is unreasonable under the circumstances, such as undertake action which is unreasonably expensive or intrusive. To prove defendant's claim of failure to mitigate, it must prove all of the following:

1. There was something plaintiff could do to mitigate her damages;
2. Requiring plaintiff to do so was reasonable under the circumstances;
3. Plaintiff acted unreasonably in failing to undertake the mitigating activity;
4. Plaintiff's failure to undertake the mitigating activity caused an identifiable portion of her damages.

If the defendant has proved all of these numbered propositions, then defendant has proved this defense, and you shall reduce the damages awarded to Coleman by the amount attributable to her failure to mitigate.

INSTRUCTION NO. 24

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually your questions about the instructions can be answered by carefully re-reading them. If, however, you feel it necessary to ask a question, you must do so in writing. I cannot communicate with you without first discussing your question and potential answer with the parties and the lawyers.

The court attendant who has been working on this case takes an oath not to communicate with you about the substance of the case. She cannot answer questions about the evidence nor speak to you except to ask if you have agreed upon a verdict, and to manage the logistics of your service. Please do not put her on the spot by asking any questions about the instructions or the evidence.

Jurors like to know how long they will deliberate each day. Normally I leave that up to you. Please notify the court attendant in writing how long you would like to work and how early you would like to reconvene, if that is necessary.

Finally, if you need to notify anyone about the time you will be deliberating, please notify them before entering the jury room or at a break in the deliberations. Please have your cell phones turned off at all times while in the jury room.

INSTRUCTION NO. 25

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.

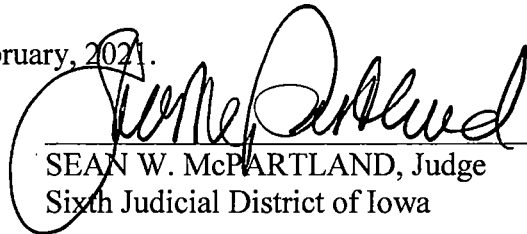
INSTRUCTION NO. 26

I am giving you ^{one} two verdict forms ^y and special interrogatories. 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 verdict and interrogatories must be signed by your foreman or forewoman.

After deliberating for six (6) hours from 12:15 o'clock p.m., excluding meals or 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 verdict and interrogatories must be signed by all seven jurors who agree.

When you have agreed upon a verdict and interrogatories and appropriately signed it, tell the Court Attendant.

Dated this 18th day of February, 2021.


SEAN W. McPARTLAND, Judge
Sixth Judicial District of Iowa