

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

DENISE COLEMAN)	
)	
Plaintiff,)	No. LACV093726
)	
vs.)	JOINT PROPOSED JURY
)	INSTRUCTIONS
JARVIS PAINTING,)	
)	
Defendant.)	
)	

The parties submit the following proposed jury instructions. Where the parties have not agreed upon an instruction, the version designated as “A” is advanced by the plaintiff and the version designated as “B” is advanced by the defendant:

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GENERAL INSTRUCTIONS

INSTRUCTION NO. 1

Statement of The Case

Members of the Jury:

This is a civil case brought by the plaintiff, Denise Coleman, against the defendant, Jarvis Painting Inc. 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.

AUTHORITY

Iowa Civil Jury Instructions § 100.1

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.

AUTHORITY

Iowa Civil Jury Instructions § 100.2

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

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.

AUTHORITY

Iowa Civil Jury Instructions § 100.3

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

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.

AUTHORITY

Iowa Civil Jury Instructions § 100.4
Iowa Rules of Evidence

INSTRUCTION NO. 5

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.

AUTHORITY

Iowa Civil Jury Instructions § 100.6
Iowa R. Civ. P. 1.509

INSTRUCTION NO. 6

Request For Admissions

The plaintiff and defendant served on the other parties 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 plaintiff and defendant or which they failed to deny.

AUTHORITY

Iowa Civil Jury Instructions § 100.7

Iowa R. Civ. P. 1.510, 1.511

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.

AUTHORITY

Iowa Civil Jury Instructions § 100.9

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908)

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.

AUTHORITY

Iowa Civil Jury Instructions § 100.11

Cody v. Toller Drug Co., 232 Iowa 475, 5 N.W.2d 824 (1942)

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.

AUTHORITY

Iowa Civil Jury Instructions § 100.12

Crouch v. National Livestock Remedy Co., 210 Iowa 849, 231 N.W. 323 (1930)

INSTRUCTION NO. 10

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.

AUTHORITY

Iowa Civil Jury Instructions § 100.18

INSTRUCTION NO. 11

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.

AUTHORITY

Iowa Civil Jury Instructions § 100.21

Iowa R. Civ. P. 1.926 (1)

INSTRUCTION NO. 12

Use of Electronic Devices

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

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 maps or Google Earth or any other program or device to search for or to 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.

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.

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

AUTHORITY

Iowa Civil Jury Instructions § 100.23

INSTRUCTION NO. 13

Contradictory Statement, Non-party, Witness Not Under Oath

You have heard evidence claiming [name of witness] made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

AUTHORITY

Iowa Civil Jury Instructions § 100.13

Iowa R. Evid. 5.613

State v. Barry, 549 N.W.2d 316, 318 (Iowa App. 1996) (A prior inconsistent statement of a witness not under oath may be considered for impeachment purposes only.)

INSTRUCTION NO. 14

Statements by A Party Opponent

You have heard evidence claiming [name of party] 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 [name of party] had made it under oath during the trial.

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

AUTHORITY

Iowa Civil Jury Instructions § 100.15

INSTRUCTION NO. 15

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 16. She also claims that the defendant breached an implied warranty, as set forth in Instruction 20. 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 23. **You must consider both claims.**

INSTRUCTION NO. 16

Corporate Party

The fact that a plaintiff or defendant is a corporation should not affect your decision. All person 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.

AUTHORITY

Iowa Civil Jury Instruction § 100.20

INSTRUCTIONS RELATING TO CLAIM

INSTRUCTION NO. 17

Essentials For Recovery – 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 workmanlike 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.

AUTHORITY

Iowa Civil Jury Instructions § 1100.1

INSTRUCTION NO. 18

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.

AUTHORITY

Iowa Civil Jury Instructions § 1100.2

Iowa Code § 554.2313

INSTRUCTION NO. 19

Reliance on Express Warranty

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

AUTHORITY

Iowa Civil Jury Instructions § 1100.3

Ertl Co. v. Lange Plastics Co., 158 N.W.2d 93 (Iowa 1968)

INSTRUCTION NO. 20A

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.

AUTHORITY

Iowa Civil Jury Instructions § 1100.4

INSTRUCTION NO. 20B

Breach of Express Warranty

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

AUTHORITY

Metropolitan Transfer Station, Inc. v. Design Structures, Inc., 328 N.W.2d 532 (Iowa App. 1982)

Sheer Const., Inc. v. W. Hodgman and Sons, Inc., 326 N.W.2d 328 (Iowa 1982)

Iowa Civil Jury Instruction § 1100.4

INSTRUCTION NO. 21A

Essentials for Recovery – Implied Warranty of Workerlike Manner

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.

AUTHORITY

Fry v. Blauvelt, 818 N.W.2d 123, 134 (Iowa 2012)

Sokol v. Morrissey, 2017 WL 4838821 at *1, fn. 1 (Iowa App. 2017) (The traditional language of “workmanlike” was amended in favor of the gender-neutral term “workerlike” to conform with the Iowa Practice Series)

INSTRUCTION NO. 21B

Essentials for Recovery – Implied Warranty of Workerlike Manner

Plaintiff must prove all of the following propositions:

1. That the house was constructed to be occupied by Coleman as a home.
2. That the house was purchased from Jarvis Painting, a builder-vendor, who had constructed it for the purpose of sale.
3. That when sold, the house was not reasonably fit for its intended purpose or had not been constructed in a good and workmanlike manner.
4. At the time of purchase, the buyer was unaware of the defect and had no reasonable means of discovering it.
5. By reason of the defective condition, the buyer suffered damages.

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.

AUTHORITY

Kirk v. Ridgway, 373 N.W.2d 491 (Iowa 1985).
Rosauer Corp. v. Sapp Dev., LLC, 856 N.W.2d 906 (Iowa 2014).
Iowa Civil Jury Instruction § 1100.6

INSTRUCTION NO. 22A

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.

AUTHORITY

Reilly Const. Co., Inc. v. Bachelder, Inc., 2015 WL 1331634 at *5

INSTRUCTION NO. 22B

Defense would not instruct on this issue.

INSTRUCTION NO. 23A

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.
2. The reasonable cost of completing any omissions in defendant's performance.

AUTHORITY

Busker v. Sokolowski, 203 N.W.2d 301 (Iowa 1972)

INSTRUCTION NO. 23B

Calculation of Damages for Both Express and Implied Warranty Claims

The measure of damages for a breach of express warranty is the cost of correcting the defects or omissions if the correction or completion would not involve unreasonable destruction of the work done by the contractor and the cost thereof would not be grossly disproportionate to the results to be obtained.

If the repair and correction of defects and omissions would require unreasonable destruction or be grossly disproportionate in cost to the results to be obtained, the appropriate measure of damages is the reduced value of the building. The reduced value is the difference between the value of the building if the contract had been fully performed and the value of the performance actually received.

AUTHORITY

Busker v. Sokolowski, 203 N.W.2d 301 (Iowa 1972).
Service Unlimited v. Elder, 542 N.W.2d 855 (Iowa 1995).
Flom v. Staley, 569 N.W.2d 135 (Iowa 1997).

INSTRUCTION NO. 24A

Plaintiff does not believe the Court should instruct on affirmative defenses.

INSTRUCTION NO. 24B

Affirmative Defenses – Essentials

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.

AUTHORITY

Iowa Code § 537A.3

Hubbard Milling Company v. Citizens State Bank, 385 N.W.2d 255 (Iowa 1986) for UCC transactions see Iowa Code sections 554.3408 and 554.5105

Iowa Civil Jury Instruction § 2400.8

INSTRUCTION NO. 25A

Plaintiff does not believe the Court should instruct on waiver.

INSTRUCTION NO. 25B

Waiver of Performance

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.

AUTHORITY

Iowa Civil Jury Instruction § 2400.12

INSTRUCTION NO. 26A

Plaintiff does not believe the Court should instruct on duty to mitigate.

INSTRUCTION NO. 26B

Duty to Mitigate Damages

Where a Plaintiff seeks damages for a wrongful act of Defendant, Plaintiff has the duty to minimize their damages. It is Defendant's burden to prove by a preponderance of the evidence that Plaintiff Coleman could have minimized the damages to her home and to prove the amount of additional loss attributable to Coleman's failure to mitigate. If Defendant proves Plaintiff failed to mitigate her damages, you must reduce the damages awarded to Coleman by the amount attributable to her failure to mitigate.

AUTHORITY

Nizzi v. Laverty Sprayers, Inc., 143 N.W.2d 312 (Iowa 1966)

Ackerman v. Lauver, 242 N.W.2d 342 (Iowa 1976)

PLAINTIFF PROPOSED SPECIAL VERDICT FORM

Question No. 1: Did Defendant breach an express warranty?

Yes _____ No _____

Question No. 2: Did Defendant breach an implied warranty of workerlike conduct?

Yes _____ No _____

(If your answer is “no” to both 1 and 2, do not answer any further questions.)

Question No. 3: If your answer is yes as to 1 or 2, state the amount of damages sustained by the Plaintiff because of Defendant’s breach. If the Plaintiff has failed to prove any damage, enter -0-.

\$ _____

DEFENSE PROPOSED SPECIAL VERDICT FORM NO. 1

BREACH OF EXPRESS WARRANTY

Question No. 1: Has the Plaintiff proven by a preponderance of evidence her claim for breach of express warranty against the Defendant Jarvis Painting regarding the work performed?

Yes _____ No _____

(If your answer is “No” do not answer the remaining questions on this verdict form, sign this verdict form and proceed to answer the questions on the Verdict Form No. 2).

Question No. 2: Has the Defendant Jarvis Painting proven its affirmative defense of waiver?

Yes _____ No _____

(If your answer is “Yes” do not answer the remaining questions on this Verdict Form, sign the verdict form, and proceed to answer the questions on the Verdict Form No. 2).

Question No. 3: Has Defendant Jarvis Painting proven that Plaintiff Denise Coleman failed to mitigate damages to her home?

Yes _____ No _____

Question No. 4: What is the total amount of damage proven by the Plaintiff to have occurred as a result of Jarvis Painting’s breach of the express warranty?

\$ _____

DEFENSE PROPOSED SPECIAL VERDICT FORM NO. 2

BREACH OF IMPLIED WARRANTY

Question No. 1: Has the Plaintiff proven by a preponderance of evidence her claim for breach implied warranty against the Defendant Jarvis Painting regarding the work performed?

Yes _____ No _____

(If your answer is “No” do not answer the remaining questions on this verdict form, sign this verdict form, and inform the Court Attendant that a verdict has been reached.)

Question No. 2: Has the Defendant Jarvis proven its affirmative defense of waiver?

Yes _____ No _____

(If your answer is “Yes” do not answer the remaining question on this Verdict Form, sign this verdict form, and inform the Court Attendant that a verdict has been reached.)

Question No. 3: Has Defendant Jarvis Painting proven that Plaintiff Denise Coleman failed to mitigate damages to her home?

Yes _____ No _____

Question No. 4: What is the total amount of damage proven by the Plaintiff to have occurred as a result of the breach of the implied warranty?

\$ _____