

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

JEFF and JULI RADCLIFF)
and RADCLIFF ENTERPRISES,)
L.L.C.)

Plaintiffs,)

v.)

CHRISTINE L. COASH and)
VITACORE, INC.)

Defendants.)

Case No. LACV112343

**DEFENDANTS' PROPOSED
JURY INSTRUCTIONS**

Instruction No. _____

Members of the Jury: In this case plaintiffs, Jeff and Juli Radcliff and Radcliff Enterprises, L.L.C. (the “Radcliffs”) claim that Christine Coash and Vita Core, Inc. (the “Defendants”) have both interfered with the Radcliffs’ contractual relationship with Curves International, Inc. and intentionally interfered with the Radcliffs’ prospective business relationship with Curves International, Inc.

Defendants, Christine Coash and VitaCore, Inc. claim that they did not engage in intentional or improper interference. They claim their acts and statements were a result of exercising their own legal rights in protection of their own financial interests and that their acts did not proximately cause the loss of a contract or the loss of a business relationship. They further claim that the Radcliffs have already been fully compensated for any alleged damages, that the Radcliffs’ damages are too speculative to be recoverable, and that the Radcliffs have failed to mitigate their damages.

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.

Iowa J.I. Civ. § 100.1 (2004).

Petition at Law and Jury Demand, Ex. 36, December 11, 2014.

Answer, January 23, 2015.

Instruction No. ____

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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Instruction No. ____

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. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Iowa J.I. Civ. § 100.3 (2004).

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

Instruction No. ____

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 including answers to interrogatories, responses to requests for admissions, and other matters which judicial notice was taken.

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

Sometimes, during 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 ruling on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Instruction No. ____

Certain testimony has been read into evidence from depositions. 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.

Iowa J.I. Civ. § 100.5 (2004).

Iowa R. Civ. P. 1.704.

Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982).

Instruction No. ____

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 of them as if the questions had been asked and answered here in court.

Iowa J.I. Civ. § 100.6 (2004).
Iowa R. Civ. P. 1.509.

Instruction No. ____

During this trial, you have heard the word ‘request for admission.’ A request for admission is a written request asked by one party of another, who must admit or deny it under oath in writing. Consider requests for admissions and the responses to them as if the questions had been asked and answered here in court.

Iowa J.I. Civ. § 100.6 (2004) (modified)
Iowa R. Civ. P. 1.510
Iowa R. Civ. P. 1.511

Instruction No. _____

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.

Iowa J.I. Civ. § 100.9 (2004).

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

Instruction No. _____

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 facts. Your sole interest is to find the truth and do justice.

Instruction No. ____

Evidence is clear, convincing and satisfactory if there is not serious or substantial uncertainty about the conclusion to be drawn from it.

Iowa J.I. Civ. § 100.19 (2004).

Raim v. Stancel, 339 N.W.2d 621, 624 (Iowa App. 1983).

Sinclair v. Allender, 26 N.W.2d 320, 326 (Iowa 1947).

Instruction No. _____

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

A corporation or limited liability company acts through its owners and/or shareholders and acts by an owner or shareholder on the entity's behalf will bind the corporation or limited liability company.

Iowa J.I. Civ. § 100.20 (2004) (modified)

Charles Veitz's Sons v. U.S. Fidelity & Guar. Co., 206 Iowa 1025, 1031, 219 N.W. 411, 414 (1928),

Patton v. Cent. Iowa Hosp. Corp., 2012 Iowa App. LEXIS 237 (Iowa App., March 28, 2012).

Arney v. Brittain & Co., 185 Iowa 1114 (Iowa 1919).

Instruction No. _____

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. ____

The parties have agreed that the following may be accepted as established facts for purposes of this case only:

1. At all times relevant, VitaCore, Inc. operated a Jenny Craig franchise in Omaha, Nebraska which they franchised from Jenny Craig Franchising, LLC.
2. At all times relevant, Defendant Christine Coash was the owner of VitaCore, Inc.
3. At all times relevant, the Radcliffs were franchisees for Curves International, Inc. and were operating a women's fitness center in the Council Bluffs, Iowa market.
4. JC Franchising, LLC. was formerly known as Jenny Craig Franchising, LLC.
5. Curves International, Inc. is a separate and distinct entity from JC Franchising, LLC f/k/a Jenny Craig Franchising, LLC.
6. The Radcliffs were approached in the Fall of 2014 to expand their existing franchise with Curves International, Inc. to include a new co-branded concept business that could sell Jenny Craig© products.
7. The co-branded concept business is called a GH3 Franchise.
8. The Radcliffs and Curves International, Inc. did not execute a Franchise Agreement for a GH3 Franchise.

Instruction No. _____

A. ISSUES

The plaintiffs, Jeff and Juli Radcliff and Radcliff Enterprises, LLC, claim that the defendants, Christine Coash and VitaCore, Inc., intentionally interfered with the Radcliffs' contractual relationship with Curves International, Inc. for a GH3 Franchise.

The Radcliffs also claim that they were damaged as a result of the alleged interference with the contractual relationship, and they seek judgment against Defendants for these damages.

Defendants admit that:

1. VitaCore, Inc. is a Nebraska Corporation with its principal place of business in Lincoln, Nebraska and does business in Omaha, Nebraska.
2. That VitaCore, Inc. operates Jenny Craig franchises in Omaha and Lincoln, Nebraska; and

Defendants deny that:

1. Defendants deny that they intentionally or improperly interfered with the Radcliffs' contractual relations and business expectations with Curves International, Inc. regarding the GH3 Franchise;
2. Defendants deny that they acted maliciously with the purpose of bringing about financial harm to the Radcliffs;
3. Defendants deny that the alleged interference is the proximate cause of any damages suffered by the Radcliffs; and
4. Defendants deny that the Radcliffs have suffered or are entitled to recover any damages.

B. BURDEN OF PROOF

Before the Radcliffs can recover against one or more of the Defendants on the claim of intentional interference with a contractual relationship, the Radcliffs must prove, all of the following propositions:

1. That the Radcliffs had a contract with Curves International, Inc. for a GH3 Franchise;

2. That one or more of the Defendants knew of the contract;
3. That one or more of the Defendants intentionally and improperly interfered with the contract by contacting Curves International, Inc.;
4. That one or more of the Defendant's interference caused Curves International, Inc. not to perform the contract or the interference made the performance of the contract more burdensome or expensive; and
5. The nature and extent the Radcliffs' damage.

C. EFFECT OF FINDINGS

If the Radcliffs have failed to prove any one or more of these propositions, the Radcliffs are not entitled to damages.

If the Radcliffs have proved all of these propositions, then you will consider the defenses as explained in Instructions Nos. _____.

Iowa J.I. Civ. § 1200.1 (2004).

Answer, January 23, 2015.

Green v. Racing Ass'n of Cent. Iowa, 713 N.W.2d 234, 243 (Iowa 2006).

Instruction No. ____

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. Substantial means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

Iowa J.I. Civ. § 700.3.

Instruction No. ____

A contract is an agreement between two or more persons to do or not to do something.

Iowa J.I. Civ. § 1200.3 (2004).

Instruction No. ____

Christine Coash and/or VitaCore, Inc. “knew” of the contract if they either had actual knowledge of the contract or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the contract between the Radcliffs and Curves International, Inc.

Iowa J.I. Civ. § 1200.4

Revere Transducers, Inc. v. Deere & Co., 595 N.W.2d 751, 764 (Iowa 1999).

Instruction No. ____

"Improper interference" for purposes of Plaintiffs' claim for intentional interference with a business relationship requires a showing that the Defendants' predominant purpose was to injure or destroy the Plaintiffs' business. "Improper Interference" does not include statements or actions where someone is exercising their own legal rights in protection of their own financial interests.

Nesler v. Fisher & Co., 452 N.W.2d 191, 199 (Iowa Feb. 21, 1990)

Wilkin Elevator v. Bennett State Bank, 522 N.W.2d 57, 62 (Iowa 1994).

Preferred Marketing Associates v. Hawkeye National Life Insurance Co., 452 N.W.2d 389, 396 (Iowa 1990)

Jackson v. State Bank of Wapello, 488 N.W.2d 151, 157 (Iowa 1992)

Instruction No. ____

In determining whether the Defendants' conduct in allegedly intentionally interfering with a contract between the Radcliffs and Curves International, Inc. is improper you should determine whether the Defendants' conduct was fair and reasonable under the circumstances. In determining whether the Defendants' conduct was improper you may consider:

1. The nature of the conduct.
2. Defendants' motives.
3. The interests of the Radcliffs with which the conduct interferes.
4. The interest sought to be advanced by Defendants.
5. The social interests in protecting the freedom of action of Defendants and the contractual interests of the Radcliffs.
6. The nearness or remoteness of Defendants' conduct to the alleged interference.
7. The relations between Defendants and the Radcliffs.

Iowa J.I. Civ. § 1200.5 (2004).

Toney v. Casey's General Stores, Inc., 460 N.W.2d 849 (Iowa 1990).

Nesler v. Fisher & Co., Inc., 452 N.W.2d 191 (Iowa 1990).

Instruction No. ____

A. ISSUES

The plaintiffs, Jeff and Juli Radcliff and Radcliff Enterprises, LLC, claim that the defendants, Christine Coash and VitaCore, Inc., intentionally interfered with the Radcliffs' prospective business relationship with Curves International, Inc.

The Radcliffs also claim that they were damaged as a result of Defendants' alleged interference with the prospective business relationship, and they are seeking a judgement against Defendants for these damages.

Defendants admit that:

1. VitaCore, Inc. is a Nebraska Corporation with its principal place of business in Lincoln, Nebraska;
2. That VitaCore, Inc. operates Jenny Craig franchises in Omaha and Lincoln, Nebraska; and

Defendants deny that:

1. Defendants deny that they have intentionally or improperly interfered with the prospective business relationship and business expectations of the Radcliffs;
2. Defendants deny that they acted maliciously with the purpose of bringing about financial harm to the Radcliffs;
3. Defendants deny that the alleged interference was the proximate cause of any damages to the Radcliffs; and
4. Defendants deny that the Radcliffs have suffered or are entitled to any damages.

B. BURDEN OF PROOF

Before the Radcliffs can recover against one or more of the Defendants on the claim of intentional interference with a prospective business relationship, the Radcliffs must prove all of the following propositions:

1. The Radcliffs have a prospective business relationship with Curves International, Inc.;
2. That one or more of the Defendants knew of the prospective relationship with Curves International, Inc.;

3. That one or more of the Defendants intentionally and improperly interfered with the relationship by contacting Curves International, Inc.;
4. That one or more of the Defendants' interference caused Curves International, Inc. not to continue the relationship or the interference prevented the Radcliffs from continuing the relationship; and
5. The nature and extent of the Radcliff's damages.

C. EFFECT OF FINDINGS

If the Radcliffs have failed to prove any of these propositions, the Radcliffs are not entitled to damages.

If the Radcliffs have proved all of these propositions, then you will consider the defenses as explained in Instructions Nos. _____.

Iowa J.I. Civ. § 1200.2 (2004).

Financial Marketing Servs. v. Hawkeye Bank, 588 N.W.2d 450 (Iowa 1999).

Preferred Marketing Assocs. Co. v. Hawkeye Nat'l Life Ins. Co., 452 N.W.2d 389 (Iowa 1990).

Nesler v. Fisher & Co., Inc., 452 N.W.2d 191 (Iowa 1990).

Instruction No. ____

Christine Coash and/or VitaCore, Inc. “knew” of the prospective business relationship if they either had actual knowledge of the prospective business relationship or else had knowledge of the facts which, if followed by reasonable inquiry, would have led to the disclosure of the prospective business relationship between the Radcliffs and Curves International, Inc.

Iowa J.I. Civ. § 1200.4 (2004).

***Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 764 (Iowa 1999).**

Instruction No. ____

Defendants' alleged interference with a contract or a prospective business relationship is intentional if the defendants either interfered with the contract or prospective business relationship on purpose or knew the conduct was substantially certain to interfere with the contract or prospective business relationship.

Iowa J.I. Civ. § 1200.6 (2004).
Restatement (2d.) of Torts, Section 766, comment j.

Instruction No. _____

In defense of the Radcliffs' claims, Defendants claim that the damages sought by the Radcliffs for past and future lost profits are too speculative to be recoverable.

The Radcliffs have the burden of proving loss of net profits with reasonable certainty.

You must determine the amount of lost net profits, if any, sustained by the Radcliffs based upon the evidence.

In determining the amount of lost profits, if any, sustained by the Radcliffs, you must apply the new business rule which provides that potential profits from a new commercial enterprise are generally too remote and speculative to be recoverable because there is no available data of past business from which anticipated profits can be established.

If you find the Radcliffs *have* met their burden, you must determine the amount of net loss they have incurred.

If you find the Radcliffs *have not* met this burden, they are not entitled to recover past and future lost net profits.

Demco, Inc. v. Frigidaire Co., 2004 Iowa App. LEXIS 1349, *14 (Iowa App. 2004).

Jamison v. Knosby, 423 N.W.2d 2, 6 (Iowa 1988).

Orkin Exterminating Co., Inc. v. Burnett, 160 N.W.2d 427 (Iowa 1968)

Renze Hybrids, Inc. v. Shell Oil Co., 418 N.W.2d 634, 639 (Iowa 1988)

O'Tool v. Hathaway, 461 N.W.2d 161, 165 (Iowa 1990).

DePenning v. Res. Elec., Inc., 2011 Iowa App. LEXIS 757, *11 (Iowa App. 2011).

Answer, January 23, 2015.

Instruction No. ____

In defense of the Radcliffs' claims, Defendants claim that the Radcliffs have failed to mitigate their damages.

The Radcliffs have a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

Defendants have the burden of proving by a preponderance of the evidence:

1. That the Radcliffs acted unreasonably in failing to make an effort to mitigate damages; and
2. The amount by which damages would have been mitigated.

If Defendants *have* met this burden of proof, then they have proved the defense of failure to mitigate, and you shall not award any damages to the Radcliffs for the portion of their damages that were caused by their failure to mitigate.

If Defendants *have not* met this burden of proof, then you should give this defense no further consideration in determining damages.

9th Cir. Model Civ. Jury Instr. § 5.3 (2007).
***Greenwood v. Mitchell*, 621 N.W.2d 200, 205 (Iowa 2001).**
Answer, January 23, 2015.

Instruction No. ____

If you find in favor of the Radcliffs on their claims for interference with a contractual relationship or interference with a prospective business relationship, then you must determine the amount of the Radcliffs' damages.

In considering what damages the Radcliffs have proven you may consider:

1. The value of lost net profits to the Radcliffs from the date of rescission of the offer to the present.
2. The present value of lost net profits to the Radcliffs in the future.

Instruction No. _____

Future damages must be reduced to present value. “Present value” is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the Radcliffs for future losses.

Gleason v. Kueker, 641 N.W.2d 553, 555 (Iowa Ct. App. Aug. 15, 2001)

Instruction No. ____

Punitive damages may be awarded if the Radcliffs have proven by clear, convincing and satisfactory evidence that Defendants' conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the Radcliffs.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage Defendants and others from like conduct in the future. Punitive damages cannot be awarded unless Defendants' conduct involves actual or legal malice. Actual malice is defined as personal spite, hatred, and ill will. Legal malice is a willful or reckless disregard of another's rights.

There is no exact rule to determine the amount of punitive damages, if any, you should award. In fixing the amount of punitive damages, you may consider all the evidence including:

1. The nature of Defendants' conduct.
2. The amount of punitive damages which will punish and discourage like conduct by Defendants in view of their financial condition.
3. The Radcliffs' actual damages.

Iowa J.I. Civ. § 210.1 (2004) (modified)

Iowa code § 668A.1

Larson v. Great West Cas. Co., 482 N.W.2d 170 (Iowa App. 1992).

Suss v. Schammel, 375 N.W.2d (Iowa 1985).

Nelson v. Restaurants of Iowa, Inc., 338 N.W.2d 881 (Iowa 1983).

Schultz v. Security Nat'l Bank, 583 N.W.2d 886 (Iowa 1998).

Instruction No. ____

I am giving you one verdict form. 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 must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock __.m. excluding meals or recesses outside your jury room, then it is necessary that only [six/seven—depends on if a juror has been excused during trial] of you agree upon the answers to the questions. In that case, the verdict must be signed by all [six/seven] jurors who agree.

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

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

JEFF and JULI RADCLIFF)
 and RADCLIFF ENTERPRISES,)
 L.L.C.)
)
 Plaintiffs,)
)
 v.)
)
 CHRISTINE L. COASH and)
 VITACORE, INC.)
)
 Defendants.)

Case No. LACV112343

VERDICT FORM

I. Verdict

On the interference with contractual relationship claim against Defendant Christine Coash, we the jury, find for (place an X beside only one statement):

- _____ A. The Plaintiffs Jeff and Juli Radcliff and Radcliff Enterprises, LLC
- _____ B. The Defendant Christine Coash.

On the interference with contractual relationship claim against Defendant VitaCore, Inc., we the jury, find for (place an X beside only one statement):

- _____ A. The Plaintiffs Jeff and Juli Radcliff and Radcliff Enterprises, LLC
- _____ B. The Defendant VitaCore, Inc.

On the interference with a prospective business relationship claim against Defendant Christine Coash, we the jury, find for (place and X beside only one statement):

- _____ A. The Plaintiffs Jeff and Juli Radcliff and Radcliff Enterprises, LLC
- _____ B. The Defendant Christine Coash.

On the interference with a prospective business relationship claim against Defendant VitaCore, Inc., we the jury, find for (place and X beside only one statement):

_____ A. The Plaintiffs Jeff and Juli Radcliff and Radcliff Enterprises, LLC

_____ B. The Defendant VitaCore, Inc.

II. Damages

Note: Complete the following section only if the above finding is in favor of the Plaintiff (option "A") on the interference with contractual relationship claim and/or the interference with a prospective business relationship claim.

We, the jury, find the Plaintiffs' damages to be: \$_____ (stating amount or, if none, write the word "none").

Dated this _____ day of September, 2017.

Foreperson*

*To be signed only if verdict is unanimous

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.

DATED this 15th day of September, 2017.

CHRISTINE COASH and VITACORE, INC.,
Defendants

BY: O'NEILL, HEINRICH, DAMKROGER,
BERGMEYER & SHULTZ, P.C., L.L.O.
ADAM J. PROCHASKA – 22307
800 Lincoln Square
121 S. 13th Street
P.O. Box 82028
Lincoln, Nebraska 68501-2028
(402) 434-3000

Peters Law Firm, P.C. and
JORDAN T. GLASER, #AT0010927
233 Pearl Street, P.O. Box 1078
Council Bluffs, IA 51503
Ph. (712) 328-3157
Facsimile (712) 328-9092
email: Jordan.glaser@peterslawfirm.com

BY: s/ Adam J. Prochaska
One of Said Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day September, 2017, I e-mailed a copy of Defendant's Proposed Jury Instructions to:

Brett Ryan, #AT0006799
Watson & Ryan, PLC
535 West Broadway, Ste. 200
P.O. Box 646
Council Bluffs, IA 51502
bryan@watsonryan.com

s/ Adam J. Prochaska
One of Said Attorneys