

IN THE DISTRICT COURT IN AND FOR JOHNSON COUNTY

RONALD LECLERE, Plaintiff, vs. TOP NOTCH CONTRACTING LLC, Defendants.	No. CVCV083886 JURY INSTRUCTIONS
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Members of the jury:

Each of the Parties, Ronald LeClere (LeClere) and Top Notch Contracting, LLC (Top Notch), assert a claim or claims against the other Party.

LeClere alleges a claim of breach of contract and a claim of consumer fraud against Top Notch. LeClere alleges that Top Notch installed a roof which was defective and nonconforming. Top Notch denies that it breached the contract or any express warranty and denies that it engaged in consumer fraud.

Top Notch alleges a claim of breach of contract against LeClere. Top Notch alleges LeClere still owes for the services Top Notch providing in installing a roof. LeClere denies that he breached the contract.

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JOHNSON COUNTY, IOWA

INSTRUCTION NO. 1

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. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or 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.

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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.

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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.
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.

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INSTRUCTION NO. 4

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.

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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.

INSTRUCTION NO. 6

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.

INSTRUCTION NO. 7

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.

INSTRUCTION NO. 8

The fact that a plaintiff or defendant is a limited liability company 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. 9

Contradictory Statements, Non-Party, Witness under Oath

You have heard evidence claiming that Deborah Lebeda made statements before this trial while under oath which were inconsistent with what she said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the witness. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

INSTRUCTION NO. 10

Statements by a Party Opponent

You have heard evidence claiming each 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 the party making the statement had made it under oath during the trial.

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

INSTRUCTION NO. 11

LeClere's Breach of Contract Claim

To prove his claim for breach of contract, Ronald LeClere must prove all of the following propositions:

1. The terms of the contract.
2. LeClere has done what the contract requires.
3. Top Notch has breached the contract.
4. The amount of any damage caused by Top Notch's breach of contract.

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

INSTRUCTION NO. 12

Top Notch's Breach of Contract Claim. To prove its claim for breach of contract, Top Notch Contracting, LLC must prove all of the following propositions:

1. The terms of the contract.
2. Top Notch has done what the contract requires.
3. LeClere has breached the contract.
4. The amount of any damage caused by LeClere's breach of contract.

If Top Notch Contracting, LLC has failed to prove any of these propositions, Top Notch Contracting, LLC is not entitled to damages. If Top Notch Contracting, LLC has proved all of these propositions, Top Notch Contracting, LLC is entitled to damages in some amount.

INSTRUCTION NO. 13

Breach - Definition

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

INSTRUCTION NO. 14

Performance and the Defense of Prior Material Breach

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 that consideration until they have performed as agreed unless full performance has been excused or prevented by the act of the other party. If a party materially breaches a contract, the non-breaching party's nonperformance post-breach is excused.

However, a party 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

Factors to consider whether a breach by Top Notch is material include:

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

INSTRUCTION NO. 15

Implied Covenant of Good Faith and Fair Dealing

Every contract contains an implied duty of good faith and fair dealing.

Acting in good faith and fair dealing in the performance or enforcement of a contract means faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.

This covenant is breached when a party to a contract acts in a manner that is offensive to community standards of decency, fairness and reasonableness.

INSTRUCTION NO. 16

Implied Warranty of Workmanship

Every construction contract contains an implied warranty that the work to be done will be completed in a reasonably good and workmanlike manner and that it will be reasonably fit for the intended purpose.

INSTRUCTION NO. 17

Damages – Breach of Contract

The measure of damages for breach of contract is an amount that would place the party in as good a position as they 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:

- Evidence of the amount paid under the contract
- Evidence of the amount agreed to be paid under the contract
- Evidence of the cost to repair damage caused by Top Notch or to complete construction of the roof

INSTRUCTION NO. 18

Damages – Foreseeability

The loss resulting from a breach of contract may be foreseeable as a reasonable result of the breach because it follows from the breach (1) in the ordinary course of events, or (2) as a result of special circumstances, beyond the ordinary course of that events, that the breaching party had reason to know.

INSTRUCTION NO. 19

Terms of the Contract

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.

INSTRUCTION NO. 20

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. 21

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.

INSTRUCTION NO. 22

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 or that the defects are only the natural result of the age of a used product. When a contract contains an express warranty as a contract term, a breach of the express warranty is a breach of the contract.

INSTRUCTION NO. 23

LeClere's Consumer Fraud Claim

To prove his claim for violation of the consumer fraud statute, LeClere must prove all of the following propositions:

1. LeClere and Top Notch entered into an agreement for Top Notch to provide LeClere residential construction services.
2. Top Notch's construction services included at least one of the following:
 - a. An unfair practice;
 - b. Deception;
 - c. Fraud;
 - d. False pretense;
 - e. False promise; *or*
 - f. The misrepresentation, concealment, suppression, or omission of a material fact,
3. The unfair practice, deception, fraud, false pretense, false promise, or misrepresentation related to a material fact;
4. Top Notch intended that LeClere rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission;
5. The claimed fraudulent practice caused actual damages.

If LeClere failed to prove any of these propositions, LeClere is not entitled to damages. If LeClere has proven all of these propositions, LeClere is entitled to damages in some amount.

INSTRUCTION NO. 24

Actual Damages – Definition

"Actual damages" means all compensatory damages proximately caused by the prohibited practice or act that are reasonably ascertainable in amount. Actual damages does not include damages for bodily injury, pain and suffering, mental distress, or loss of consortium, loss of life, or loss of enjoyment of life.

INSTRUCTION NO. 25

Deception – Definition

"Deception" means an act or practice that is likely to mislead a substantial number of consumers as to a material fact or facts.

INSTRUCTION NO. 26

Unfair Practice – Definition

"Unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

INSTRUCTION NO. 27

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

INSTRUCTION NO. 28

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.

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INSTRUCTION NO. 29

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.

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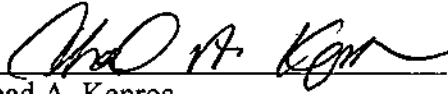
INSTRUCTION NO. 30

I am giving you one verdict form with eight questions. 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 foreperson.

After deliberating for six hours, 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 must be signed by all seven jurors who agree.

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

Signed this 2nd day of October, 2025.


Chad A. Kepros
Judge, Sixth Judicial District of Iowa

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