

Original

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BRENT SNYDER AND JESSICA SNYDER,

Plaintiffs,

v.

TAMARA KRACHT, Individually and as
Agent of Re/Max, LC, REAL ESTATE
CONCEPTS, LC d/b/a RE/MAX
CONCEPTS, BRIAN CAMPBELL

Defendants.

Case No. LACL156356

JURY INSTRUCTIONSFILED
POLK COUNTY, I.A.
2025 JUL 10 PM 3:15
CLERK DISTRICT COURT

Instruction No. 1

In this case, Plaintiffs Brent Snyder and Jessica Snyder allege they were damaged by the Defendants Brian Campbell and Tamara Kracht, individually and as an employee of RE/MAX, LC, because the Defendants fraudulently failed to disclose material facts about real estate Plaintiffs purchased from Defendant Campbell in Polk County, Iowa. Defendants Kracht, who was an agent of Defendant RE/MAX, was Defendant Campbell's real estate agent in the transaction.

Defendants deny all the Plaintiff's claims, and deny Plaintiffs were damaged as they allege.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will give you after you have heard all the evidence.

Instruction No. 2

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. 3

For Plaintiff's claim of fraudulent misrepresentation, the burden of proof is clear, convincing, and satisfactory evidence. That means, whenever a party must prove something, they must do so by a preponderance of clear, convincing, and satisfactory evidence. Evidence is clear, convincing, and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from the evidence.

Instruction No. 4

You shall base your verdict only upon the evidence and these instructions. Evidence is:

- Testimony in person or by deposition.
- Exhibits received by the court.
- Stipulations which are agreements between the parties.
- Any other matter admitted (for example, answers to interrogatories, matters of 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:

- Statements, arguments, questions and comments by the lawyers during voir dire, opening, questioning, or closing.
- Objections and rulings on objections.
- Any testimony I told you to disregard.
- Anything you saw or heard about this case outside the courtroom.

Instruction No. 5

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. 6

You have heard evidence claiming Tamara Kracht and Brian Campbell made statements before this trial while not under oath.

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

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

Instruction No. 7

From time to time during the trial, I was called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the parties or their counsel to object when another party offers testimony or other evidence that they believe is not properly admissible. You should not show prejudice against a lawyer or the party they represent because either made objections. You should not infer or conclude from any ruling or other comment I made that I had any opinions on the merits of the case favoring one side or the other. If I sustained an objection that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

Instruction No. 8

The fact that one of the parties to this case is a business and other parties are human beings should not affect your decision. All parties are equal before the law and entitled to the same fair and conscientious consideration. In reaching your verdict, you may not consider how any money damages may be paid.

Instruction No. 9

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. 10

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. 11

Defendant RE/MAX, LC is liable for the wrongful acts of Tamara Kracht to the extent she is found liable for those acts while engaged in them within the scope of her employment.

Instruction No. 12

To prove their claim for fraudulent misrepresentation against Defendant Brian Campbell, Plaintiffs must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. Defendant Campbell failed to disclose to Plaintiffs or their agent Jason Mickelson the following facts:

a. That the June Campbell Trust, which owned property adjacent to 2608 NE 102nd Avenue, Ankeny, Iowa, was negotiating to sell that property to DRA Properties, LC, prior to accepting the Plaintiff's offer to purchase and prior to the closing.

b. That a proposed condition on the sale of the June Campbell Trust property to DRA Properties, LC was that the June Campbell Trust, which also owned 2538 and 2518 NE 102nd Avenue, would support and consent to the annexation of such property by the City of Ankeny.

c. That a proposed condition on the sale of the June Campbell Trust property to DRA Properties, LC was that Scott Campbell, the owner of 2480 NE 102nd Avenue, would support the annexation of such property by the City of Ankeny, and that Scott Campbell would consent to an easement for a sanitary sewer on his property.

d. That a proposed condition on the sale of the June Campbell Trust property to DRA Properties, LC was that Brian Campbell would support the annexation of such property by the City of Ankeny.

e. That a proposed condition on the sale of the June Campbell Trust property to DRA Properties, LC was that, in the event Brian Campbell sold 2608 102nd Avenue before DRA Properties, LC acquired the June Campbell Trust property, the purchase agreement for 2608 102nd Avenue must include as a condition that the buyers will support annexation of the property the June Campbell Trust would sell to DRA Properties, LC.

2. The facts Defendant Campbell failed to disclose were not readily observable or ascertainable by the Plaintiffs with a reasonable inquiry.

3. In deciding to purchase the real estate, the Plaintiffs relied upon Defendant Campbell's failure to disclose and their reliance was justified.

4. Defendant Campbell intended to deceive the Plaintiffs.

5. The failure to disclose the facts was a cause of damage to the Plaintiffs.

6. The amount of damage.

If the Plaintiffs have failed to prove any of these propositions, the Plaintiffs cannot recover damages. If the Plaintiffs have proved all of these propositions, they are entitled to recover damages in some amount.

Instruction No. 13

To prove their claim for fraudulent misrepresentation against Defendants Kracht and RE/MAX, Plaintiffs must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. Defendant Kracht failed to disclose to Plaintiffs, or their agent, Jason Mickelson, the fact that Brian Campbell told her in April 2022 that DRA Properties, LC was trying to purchase the June Campbell Trust Property adjacent to 2608 NE 102nd Avenue, Ankeny, Iowa, prior to the closing.
2. The fact Defendant Kracht failed to disclose was not readily observable or ascertainable by the Plaintiffs with a reasonable inquiry.
3. In deciding to purchase the real estate, the Plaintiffs relied upon Defendant Kracht's failure to disclose and their reliance was justified.
4. Defendant Kracht intended to deceive the Plaintiffs.
5. The failure to disclose the fact was a cause of damage to the Plaintiffs.
6. The amount of damage.

If the Plaintiffs have failed to prove any of these propositions, the Plaintiffs cannot recover damages. If the Plaintiffs have proved all of these propositions, they are entitled to recover damages in some amount.

Instruction No. 14

Concerning proposition No. 3 of Instruction Nos. 12 and 13, Plaintiffs must prove they relied on the representation and that the reliance was justified.

It is not necessary that the representation be the only reason for the Plaintiffs' action. It is enough if the representation was a substantial factor in bringing about the action.

Whether reliance is justified depends on what the Plaintiffs can reasonably be expected to do in light of their own information and intelligence. Reliance is not justified if the representation is of an unimportant fact or is obviously false.

Instruction No. 15

Concerning proposition No. 4 of Instruction Nos. 12 and 13, the Defendants are liable only to a person or group of persons whom they intended or had reason to expect would act or refrain from acting in reliance on a representation. A person has reason to expect a result if they have information from which a reasonable person would conclude the result will follow.

The Defendants are liable only to those persons who rely on their representation in the type of transaction in which the Defendants intend or have reason to expect the conduct of others will be affected.

Instruction No. 16

The measure of damages for fraudulent misrepresentation is an amount that would place Plaintiffs in as good a position as they would have enjoyed if Defendants had not failed to disclose material facts about the property.

The damages you award for fraudulent misrepresentation must be foreseeable or have been reasonably foreseen at the time the non-disclosure occurred.

In your consideration of the damages, you may consider the following:

- a. The difference between the price Plaintiffs' paid for the real estate compared to its actual value;
- b. The difference in property taxes Plaintiffs will pay compared to what they expected to pay;
- c. Other expenses Plaintiffs would not have incurred had Defendants not failed to disclose material facts.

Instruction No. 17

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. 18

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

Instruction No. 19

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. 20

Occasionally, after the jury retires to the jury room, the members of the jury have questions. I have prepared the instructions after carefully considering this case with the parties and their lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully reading them again. If however, any of you feel that it is necessary to ask a question of me, you must do so in writing and deliver the question to my judicial assistant. I cannot communicate with you without first discussing your question and the potential answer with the parties and their lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the court with the verdict forms.

The judicial assistant has been working with me on this case and is in the same position as I am. The judicial assistant has taken an oath not to communicate with you except to ask if you have agreed upon the verdict. Please do not put my judicial assistant on the spot by asking questions. You must direct your questions exclusively to me and not to my judicial assistant.

Instruction No. 21

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. 22

I am giving you one (1) 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 11:45 o'clock 1.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 must be signed by all seven jurors who agree.

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

Submitted on July 10, 2025

A handwritten signature in black ink, appearing to read "Patrick D. Smith", written over a horizontal line.

Patrick D. Smith, Judge
Fifth Judicial District of Iowa