

IN THE IOWA DISTRICT COURT IN AND FOR DAVIS COUNTY

MATTHEW JEFFERSON and DEBORAH
JEFFERSON,
Plaintiffs,

vs.

GROUNDWORKS FRS LLC d/b/a
FOUNDATION RECOVERY SYSTEMS,
Defendant.

NO. CVEQ007537

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the Jury: In this case, Plaintiffs Matthew and Deborah Jefferson, claim that Defendant, Groundworks FRS, breached the contract between the parties for foundation repairs to Plaintiffs' home resulting in damages to Plaintiffs. Defendant denies that it breached the contract and claims Plaintiffs lack of maintenance of their home caused the damages and further that Plaintiffs failed to mitigate damages by not allowing subsequent repairs after the work was done. 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. 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.

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.

INSTRUCTION NO. 3

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. 4

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.

INSTRUCTION NO. 5

Decide the facts from the evidence. Consider the evidence using your observations, reasoning, common sense, and experience. It is your duty to determine the credibility of witnesses, to resolve any conflicts in the evidence, and to draw reasonable inferences from the evidence. 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 that 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. Whether a witness has made inconsistent statements.
3. The witness's appearance, conduct, age, intelligence, memory and knowledge of the facts.
4. The witness's interest in the trial, their motive, candor, bias, and prejudice.

Try to reconcile any conflicts in the evidence, but if you cannot, accept any evidence you find believable and give it the weight you believe it deserves.

INSTRUCTION NO. 6

There are two types of evidence, direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. Circumstantial evidence is the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

The law makes no distinction between direct and circumstantial evidence but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in this case, both direct and circumstantial.

INSTRUCTION NO. 7

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. 8

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

INSTRUCTION NO. 9

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. 10

You have heard evidence claiming certain witnesses 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.

INSTRUCTION NO. 11

You have heard evidence claiming certain witnesses made statements before this trial while under oath which were inconsistent with what the witness 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 a witness who is not a party to this case. 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. 12

You have heard evidence claiming Plaintiffs and/or Defendants made statements before this trial while under oath and others 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 they had made it under oath during the trial.

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

INSTRUCTION NO. 13

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.

INSTRUCTION NO. 14

The fact that 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. 15

Personal prejudices have no place in court. You must set aside and disregard any personal feelings of bias or prejudice that you may have based on sex, race, religion, national origin, age, or disability. You must decide this case only based on the evidence that is admitted and the law as I explain it to you.

INSTRUCTION NO. 16

For Plaintiffs to recover on their claim against Groundworks FRS for breach of contract, the Plaintiffs must prove all of the following propositions:

1. The existence of a contract.
2. The terms of the contract.
3. Plaintiffs have done what the contract requires of them.
4. Defendant has breached the contract.
5. The amount of any damage Defendant has caused.

If Plaintiffs have failed to prove any of these propositions, Plaintiffs are not entitled to damages. If the Plaintiffs have proved all of these propositions, then you will consider the defenses of prevention and waiver as explained in Instruction No. 19.

INSTRUCTION NO. 17

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. 18

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

INSTRUCTION NO. 19

Defendant claims performance was excused because of one or more of the following:

1. Plaintiffs prevented Defendant from completing the contract,
2. Plaintiffs waived their right for performance by failing to notify Defendant of allegedly ongoing issues and allowing Defendant to fix those issues; or
3. Plaintiffs waived their right for performance by failing themselves to do work they said they would do.

If Defendant has proved prevention or waiver, then you shall find the Defendant did not breach the contract.

If Defendant has failed to prove prevention or waiver, then you shall decide whether the Plaintiffs are entitled to recover damages.

INSTRUCTION NO. 20

Performance is excused if the other party prevents it or makes it impossible.

INSTRUCTION NO. 21

The right to insist on performance can be given up. This is known as a “waiver.” A waiver may be shown by actions, or you may conclude from Plaintiffs’ conduct and the surrounding circumstances that a waiver was 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. 22

The measure of damages for breach of a contract is an amount that would place Plaintiffs 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 either of the following:

- A. The actual costs incurred and reasonably anticipated to repair Plaintiffs' home, using like-kind materials, to its pre-loss condition; OR
- B. If repair cannot be achieved without unnecessary economic waste as described in Instruction No. 23, the reduction in value to Plaintiffs' home as expressed by the market value of the home had the repairs been completed less the present market value of the home.

In addition to the damages in A or B, you may also consider any of the following so long as they were foreseeable damages by Defendant at the time of entering into the contract as the natural and probable result of a breach of the contract:

- Costs incurred for rent paid for an alternative residence;
- Costs for rental of storage units for storage of personal property;
- Costs for utilities to the subject property while Plaintiffs did not live there;
- Costs incurred for additional travel; and
- Any other direct financial harm incurred by Plaintiffs as a natural and foreseeable result of Groundworks FRS breach of contract.

INSTRUCTION NO. 23

The amount of damages are subject to the doctrine of economic waste. Any damages you may award may not cause unnecessary economic waste. Economic waste occurs when the cost of repair is grossly disproportionate to the benefit received from the property owner or if repair would require unnecessary destruction of work already done. Should you find that the cost of repair would create economic waste the amount of damages awarded for the property should be for the reduction in value of the property as a result of the damages.

INSTRUCTION NO. 24

Defendant claims Plaintiffs failed to mitigate their damages for breach of contract by not exercising ordinary care in taking measures to rectify, minimize, or avoid the harm they are alleging in this matter. Plaintiffs have a duty to exercise reasonable diligence to lessen any damages they may have suffered. However, plaintiffs have no duty to do something that is unreasonable under the circumstances.

To prove Defendant's claim of failure to mitigate, Defendant must prove all of the following:

1. There was something Plaintiffs could do to lessen their damages;
2. Requiring Plaintiffs to do so was reasonable under the circumstances;
3. Plaintiffs failed to act with reasonable diligence to lessen their damages; and
4. Plaintiffs' failure to undertake the mitigating activity caused a portion of their damages.

If Defendant has proved these numbered propositions, then Defendant has proven this defense, and you shall reduce damages you find Plaintiffs have proven by the amount of damages they could have been avoided by mitigating their damages. If Defendant has failed to prove one or more of these numbered propositions, then Defendant has not proven Plaintiffs failed to mitigate their damages.

INSTRUCTION NO. 25

Plaintiff must prove damages with reasonable certainty. Although Plaintiffs are not required to prove the amount of damages with mathematical precision, you may not award speculative, excessive, or unsupported amounts.

INSTRUCTION NO. 26

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. 27

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. 28

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform, including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

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 the internet or application-based maps or programs, or any other application, program, or device to search for or 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 the 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 the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself 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.

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

INSTRUCTION NO. 29

Occasionally, after a jury retires to the jury room, the members have questions. Usually, questions about instructions can be answered by carefully re-reading them. One question sometimes asked relates to whether the jurors can obtain a copy of a transcript of the testimony. You must rely upon your memory of the evidence, as there is no transcript available.

If, however, any of you feel it necessary to ask any question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and the potential answer with the parties and lawyers. This process naturally takes considerable time before I can reply.

Keep the written question and response and return it to the Court with the verdict.

INSTRUCTION NO. 30

The court attendant who has been working with me on this case is in the same position as I am. She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put her on the spot by asking her any questions. You should direct your questions to the Court and not to the court attendant.

INSTRUCTION NO. 31

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. 32

Smoking is prohibited in the jury room during deliberations. If a juror feels it necessary to smoke, the juror must leave the jury room and smoke in an area designated by the Court Attendant. During this juror's absence, the jury may not continue to deliberate as all jurors must be present during deliberations.

INSTRUCTION NO. 33

I am giving you one copy of the 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 presiding juror.

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.

INSTRUCTION NO. 34

I have not by these instructions, by any ruling made, by any act done, or by anything said during the trial intended or attempted to give any opinion as to what the facts are, what the proof is, or what your verdict should be.



State of Iowa Courts

Case Number
CVEQ007537

Case Title
MATTHEW & DEBORAH JEFFERSON VS GROUNDWORKS
FRS LLC
Type: JURY INSTRUCTIONS

So Ordered

Amber L. Thompson, District Court Judge,
Eighth Judicial District of Iowa