

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Carrie Kasper,  
Plaintiff,

vs.

Legacy Elite Escrow, INC.  
Defendant.

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) Case No. LACV083194  
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) JURY INSTRUCTIONS  
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Statement of the Case

Members of the Jury: In this case Plaintiff Carrie Kasper claims that Defendant Legacy Elite Escrow, Inc. failed to make a 401(K) contribution under an employment agreement between herself and Defendant.

The Defendant denies Plaintiff's claims and states that Defendant had no obligation to make a 401(K) contribution on Plaintiff's behalf.

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.

FILED  
2023 FEB -9 AM 10:08  
CLERK OF DISTRICT COURT  
JOHNSON COUNTY, IOWA

# INSTRUCTION NO. 1

Whenever a party must prove something, the party 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. 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. 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.

### INSTRUCTION NO. 3

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. 4**

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. 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 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. 7**

You have heard evidence claiming parties 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 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 the party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.



**JOINT INSTRUCTION No. 8**

The fact that any party 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.

**JOINT INSTRUCTION NO. 9**

In order to prevail on her claim of breach of contract, Plaintiff must prove all of the following propositions:

1. The existence of a contract.
2. The terms of the contract.
3. The Defendant Legacy Elite Escrow, Inc. has breached the contract.
4. The amount of any damage Defendant Legacy Elite Escrow, Inc. has caused.

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.

**JOINT INSTRUCTION NO. 10**

The existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances.

## JOINT INSTRUCTION NO. 11

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. 12**

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

**INSTRUCTION NO. 13**

For Plaintiff to prevail on her claim under the Iowa Wage Payment Collection Law, Plaintiff must prove all the following propositions:

1. At the time of her separation from employment, Plaintiff was due wages from Defendant Legacy Elite Escrow, Inc.
2. Defendant Legacy Elite Escrow, Inc. failed to pay the wages to plaintiff when due.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to recover on her Iowa Wage Payment claim. If the Plaintiff has proved all of these propositions, then Plaintiff is entitled to recover the amount of wages you find to be due.

#### INSTRUCTION NO. 14

For purposes of Plaintiff's claim under the Iowa Wage Payment Collection Law, the term "wages" is defined to include compensation for labor or services rendered by an employee, whether determined on a time, task, piece, commission, or other basis of calculation. Wages also include payments into a fund, such as a 401(k) or other profit-sharing plan, when said payments are due to an employee under an existing agreement with the employer or under a policy of the employer.

**INSTRUCTION No. 15**

If you find that the parties did not define the term "profit," you may use the dictionary definition of the term.

Profit is defined as "[t]he excess of revenues over expenditures in a business transaction."



#### INSTRUCTION NO. 16

If you find in favor of Plaintiff on her claim of breach of contract then you must award Plaintiff such amount that you find would place Plaintiff in as good a position as she 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 amount you find Defendants agreed to pay Plaintiff under the terms of the contract. You may also consider any potential market growth that could have been expected or anticipated were the funds deposited when the agreement required.

If you find in favor of Plaintiff on her claim under the Iowa Wage Payment Collection Law, then you must award Plaintiff the amount of wages that were due and that Defendants have not paid.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy. However, damages need not be proven with mathematical certainty. A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded for another item of damage.

**INSTRUCTION NO. 17**

As an entity Legacy Elite Escrow, Inc. can only act through its owners, representatives, and agents. The actions of Alan Bennett, Michelle Bennett, and any employee of Legacy Elite Escrow, Inc. are the actions of Legacy Elite Escrow, Inc.

#### INSTRUCTION NO. 18

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. 19

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually, your questions about the instructions can be answered by carefully re-reading them. If, however, you feel it necessary to ask a question, you must do so in writing. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers.

The court attendant who has been working with me on this case is in the same position as I am. She takes an oath not to communicate with you about the substance of the case. She should not speak to you except to ask if you have agreed upon a verdict, and to manage the logistics of your service. Please do not put her on the spot by asking any questions about the instructions or the evidence. Jurors like to know how long they will deliberate each day. Normally I leave that up to you. Please notify the court attendant in writing how long you would like to work and how early you would like to reconvene, if that is necessary.

Finally, if you need to notify anyone about the time you will be deliberating, please notify the court attendant and we will make a phone available to you. Before you enter the jury room, give your cell phones to the court attendant for safekeeping. Cell

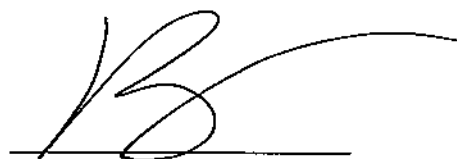
phones are not allowed in the jury room. The cell phones will be returned to their owners when the jury deliberations are concluded or when you leave the courthouse for the day.

INSTRUCTION NO. 20

I am giving you one verdict form. During the first three 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 three hours from 4:30 o'clock P.m. excluding meals or recesses outside your jury room, then it is necessary that only (five) of you agree upon the answers to the questions. In that case, the verdict must be signed by all (five) jurors who agree.

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

  
Valerie L. Clay  
Judge, Sixth Judicial District

February 8, 2023

2/9/2023

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FILED  
2023 FEB -9 AM 10:08  
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