

1 IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

2 RAY D. PATTERSON,
3 Plaintiff(s),

)

LACV073714

4 v.

)

JURY INSTRUCTIONS

5 JASON SENCER and LAURA SENCER,
6 Defendant(s).

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8 Instruction No. 1

9 Members of the jury, the people involved in a lawsuit are called "parties" to
10 the lawsuit. In this case, the parties are Ray D. Patterson, Jason Sencer, and
11 Laura Sencer. Patterson is the plaintiff, and he brings claims against the
12 Sencers, who are the defendants.

13 The claims in this case arise from Patterson's purchase of real estate from
14 the Sencers. Patterson claims that the Sencers failed to disclose material
15 defects, misrepresented the condition of the property, and performed work on the
16 property that was not done in a good and workmanlike manner.

17 Patterson alleges the following theories of recovery:

18 Count I – Breach of Contract

19 Count II – Fraudulent Misrepresentation

20 Count III – Fraudulent Nondisclosure

21 Count IV – Negligent Misrepresentation

22 Count V – Violation of Statutory Duty to Disclose

23 Count VI – Consumer Fraud

24 Count VII – Implied Warranty of Workmanship

25 The Sencers deny all of the claims.

1 Do not consider this summary as proof of any claim. Decide the facts from
2 the evidence and apply the law which I will now give you.

Instruction No. 2

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2 My duty is to tell you what the law is. Your duty is to accept and apply this
3 law. You must consider all of the instructions together because no one
4 instruction includes all of the applicable law. The order in which I give these
5 instructions is not important.

6 Your duty is to decide all fact questions.

7 As you consider the evidence, do not be influenced by any personal
8 sympathy, bias, prejudices, or emotions. It is common to have hidden or implicit
9 thoughts that help us form our opinions. You are making very important
10 decisions in this case. You must evaluate the evidence carefully. You must
11 avoid decisions based on things such as generalizations, gut feelings, prejudices,
12 fears, sympathies, stereotypes, or inward or outward biases. The law demands
13 that you return a just verdict, based solely on the evidence, your reason and
14 common sense, and these instructions. As jurors, your sole duty is to find the
15 truth and do justice.
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Instruction No. 3

You must 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 (for example, answers to interrogatories, matters which judicial notice was taken, 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, witness 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 deposition testimony has been referred to in this trial. A deposition is testimony taken under oath before the trial and preserved in writing or videorecording. Consider that testimony as if it had been given in court.

Instruction No. 5

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

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 witness's 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 witness's appearance, conduct, age, intelligence, memory, and knowledge of the facts.
3. The witness's interest in the trial, their motive, candor, bias, and prejudice.

Instruction No. 7

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

Instruction No. 8

1 An expert witness may have been asked to assume certain facts were true
2 and to give an opinion based on that assumption. This is called a hypothetical
3 question. If any fact assumed in the question has not been proved by the
4 evidence, you should decide if that omission affects the value of the opinion.
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Instruction No. 9

You have heard evidence claiming a party made statements before this trial while under oath and/or 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 that party had made it under oath during the trial.

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

Instruction No. 10

Whenever a party must prove something, they must do so either by “preponderance of the evidence” or by “clear, convincing, and satisfactory evidence”

“Preponderance of the evidence” is evidence that is more convincing than opposing evidence.

Evidence is “clear, convincing, and satisfactory” if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

Other instructions will tell you which of these burden must be met for each of Patterson’s claims.

Neither burden depends upon the number of witnesses testifying on one side or the other.

COUNT I – breach of contract

Instruction No. 11

The parties agree that they were capable of contracting, that a contract existed, that there was consideration for the contract, and that Patterson has done what the contract requires. Patterson must prove all the following propositions by a preponderance of the evidence:

1. The terms of the contract.
2. The Sencers have breached the contract.
3. The breach caused Patterson's damages.
4. The amount of the damages.

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

Instruction No. 12

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 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. 13

1 A breach of the contract occurs when a party fails to perform a term of the
2 contract.
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COUNT II – fraudulent misrepresentation

Instruction No. 14

The parties agree that the Sencers, on or about April 20, 2023, made representations to Patterson as to the condition of the property at 2700 4th Street N.W., Mason City, Iowa. Patterson must prove all the following propositions by a preponderance of clear, satisfactory, and convincing evidence:

1. The representations were false.
2. The representations were material.
3. The Sencers knew the representations were false.
4. The Sencers intended to deceive Patterson
5. Patterson acted in reliance on the truth of the representations and was justified in relying on the representations.
6. The representations were a cause of Patterson's damages.
7. The amount of damages.

If Patterson has failed to prove any one of these propositions, he cannot recover damages. If Patterson has proved all of these propositions, he is entitled to recover damages in some amount.

COUNT III – fraudulent nondisclosure**Instruction No. 15**

The parties agree that special circumstances existed which gave rise to a duty of disclosure between the parties. Patterson must prove all the following propositions by a preponderance of clear, satisfactory, and convincing evidence:

1. While those special circumstances existed, the Sencers were aware the property at 2700 4th Street N.W. in Mason City, Iowa, had water and/or mold damage.
2. While those special circumstances existed, the Sencers concealed or failed to disclose their knowledge of water and/or mold damage.
3. The undisclosed information was material to the transaction.
4. The Sencers knowingly failed to make the disclosure.
5. The Sencers intended to deceive Patterson by withholding such information.
6. Patterson acted in reliance upon the Sencers' failure to disclose and was justified in such reliance.
7. The failure to disclose was a cause of Patterson's damages.
8. The nature and extent of Patterson's damages.

If Patterson has failed to prove any one of these propositions, he cannot recover damages. If Patterson has proved all of these propositions, he is entitled to recover damages in some amount.

Instruction No. 16

1 A "representation" is any word or conduct asserting the existence of a fact.
2 It may include silence if the Sencers fail to disclose information which they have
3 a duty to disclose and which Patterson has reason to believe will be disclosed. A
4 representation of fact includes an opinion expressed for the deliberate purpose of
5 deceiving another.

6 A representation also includes an opinion. An opinion is a statement of a
7 person's belief that a fact exists or their judgment as to quality, value,
8 authenticity, or similar matter. A representation of fact implies that the maker has
9 definite knowledge or information supporting their statement; a representation of
10 opinion does not. You must consider all of the surrounding circumstances,
11 including the exact words used, in deciding whether a representation is one of
12 fact or opinion.

Instruction No. 17

A representation is "material" if:

1. A reasonable person would consider it as important in making a decision.
2. The Sencers know or have reason to know that Patterson considers, or is likely to consider, the representation as important in making a decision.
3. The representation influences a person to enter into a transaction which would not have occurred otherwise.

Instruction No. 18

The Sencers knew the representation was false if any of the following situations existed:

1. The Sencers actually knew or believed the representation was false.
2. The Sencers made the representation without belief in its truth or in reckless disregard of whether it was true or false.
3. The Sencers falsely stated or implied that the representation was based on their personal knowledge or investigation.
4. The defendant made a representation which they knew or believed was materially misleading because it left out unfavorable information.
5. The defendant stated their intention to do or not to do something when they did not actually have that intention.
6. The Sencers knew the representation could be understood in both a true and false manner, and made the representation (a) intending that it be understood in the false sense, (b) having no belief as to how it would be understood, or (c) in reckless disregard of how it would be understood.
7. The Sencers' special source of information made it the Sencers' duty to know whether the representation was true or false.

Instruction No. 19

The Sencers intended to deceive Patterson if any of the following situations existed when they made a representation:

1. The Sencers wanted to deceive Patterson or believed that Patterson would in all likelihood be deceived.
2. The Sencers had information from which a reasonable person would conclude that Patterson would be deceived.
3. The Sencers made the representation without concern for the truth.

Instruction No. 20

1 The Sencers liable only to a person or group of persons whom they
2 intended or had reason to expect would act or refrain from acting in reliance on
3 the representation. It is not necessary that the Sencers knew Patterson's name
4 so long as the Sencers intended or had reason to expect that the representation
5 would be received and relied upon by a group of persons including Patterson. A
6 person has reason to expect a result if they have information from which a
7 reasonable person would conclude that the result will follow.

8 The Sencers are liable only to those persons who rely on the
9 representation in the type of transaction in which the Sencers intend or have
10 reason to expect the conduct of others will be affected.
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Instruction No. 21

1 Patterson must rely on the representation and the reliance must be
2 justified.

3 It is not necessary that the representation be the only reason for
4 Patterson's action. It is enough if the representation was a substantial factor in
5 bringing about the action.

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

Instruction No. 22

Patterson is justified in relying on the Sencers' representation of opinion only if one or more of the following situations exist:

1. The Sencers have or claim to have special knowledge of the matter that Patterson does not have.
2. The Sencers have a fiduciary or other similar relation of trust and confidence with Patterson.
3. The Sencers have successfully tried to gain Patterson's confidence.
4. The Sencers know of some special reason to expect that Patterson will rely on the opinion.

COUNT IV – negligent misrepresentation**Instruction No. 23**

The parties agree that the Sencers had a financial interest in supplying information and that they intended to supply the information for the benefit and guidance of Patterson. Patterson must prove all the following propositions by a preponderance of the evidence:

1. The Sencers, on or about April 20, 2023, negligently supplied information to Patterson as to the condition of the property at 2700 4th Street N.W., Mason City, Iowa, which was false.
2. a. The Sencers intended the information to influence the transaction for which the information was supplied; or
b. The Sencers knew that the person who received the information intended the information to influence the transaction for which the information was supplied.
3. Patterson acted in reliance on the truth of the information supplied and was justified in relying on the information.
4. The negligently supplied information was a cause of Patterson's damages.
5. The amount of damages.

If Patterson has failed to prove any one of these propositions, he cannot recover damages. If Patterson has proved all of these propositions, he is entitled to recover damages in some amount.

Instruction No. 24

"Information" means any word or conduct asserting the existence of a fact. Information includes opinions based on facts equally well known to the Sencers and the person who receives the information.

Instruction No. 25

1 A person negligently supplies information by failing to use the care or skill
2 of a reasonable person in obtaining or communicating the information. If a
3 reasonable person would investigate the information before communicating it, the
4 supplier must make such an investigation. In addition, the supplier must use
5 reasonable care of skill to communicate the information accurately.
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Instruction No. 26

1 The person receiving the information must rely on the information and the
2 reliance must be justifiable.

3 It is not necessary that the information be the only reason for the action
4 taken by Patterson. It is enough if the information had a material influence on
5 Patterson's conduct and was a substantial factor in bringing about the action.

6 Reliance is justified when a reasonably careful person would be justified in
7 relying on the information supplied. Reliance is not justified if the person
8 receiving the information known or in the exercise of ordinary care should know
9 that the information is false.
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Count V – violation of statutory duty to disclose**Instruction No. 27**

The parties agree that Sencers sold real property to Patterson and provided a disclosure statement to Patterson. Patterson must prove all the following propositions by a preponderance of the evidence:

1. The Sencers
 - a. had actual knowledge of any inaccuracy in their disclosure statement, or
 - b. failed to exercise ordinary care in obtaining information.
2. The inaccuracy was material to the sale of the property.
3. The inaccuracies or nondisclosures were the cause of Patterson's damages.
4. The amount of damages.

If Patterson has failed to prove any one of these propositions, he cannot recover damages. If Patterson has proved all of these propositions, he is entitled to recover damages in some amount.

Count VI – consumer fraud**Instruction No. 28**

Patterson must prove all the following propositions by a preponderance of the evidence:

1. The Sencers engaged in a practice or act that they knew or reasonably should have known was a deception, fraud, false pretense, or false promise, misrepresentation, concealment, suppression, or omission.
2. Such deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission was made in connection with the sale of real property to Patterson.
3. Such deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission related to a material fact or facts.
4. The Sencers intended for Patterson to rely upon the deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission.
5. Patterson suffered an ascertainable loss of money as the result of the Sencers' deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission.
6. The amount of damages.

If Patterson has failed to prove any one of these propositions, he cannot recover damages. If Patterson has proved all of these propositions, he is entitled to recover damages in some amount.

COUNT VII – breach of implied warranty of workmanship

Instruction No. 29

Patterson must prove all of the following propositions by a preponderance of the evidence:

1. The property at 2700 4th Street N.W., Mason City, Iowa, was constructed to be occupied by the buyer as a home.
2. The house was purchased from a builder-vendor, who had constructed it for the purpose of sale.
3. When sold, the house was not reasonably fit for its intended purpose or had not been constructed in a good and workmanlike manner.
4. At the time of purchase, Patterson was unaware of the defect and had no reasonable means of discovering it.
5. By reason of the defective condition Patterson suffered damages.
6. The amount of damages.

If Patterson has failed to prove any one of these propositions, he cannot recover damages. If Patterson has proved all of these propositions, he is entitled to recover damages in some amount.

Instruction No. 30

1 The term "builder" denotes a general building contractor who controls and
2 directs the construction of a building, has ultimate responsibility for a completion
3 of the whole contract and for putting the structure into permanent form, thus
4 necessarily excluding merchants, material men, artisans, laborers,
5 subcontractors, and employees of a general contractor.
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Damages

Instruction No. 31

The measure of damages is an amount that would place Patterson in as good a position as he would have enjoyed if the contract had been performed, the disclosure had been accurate, and/or if the Sencers' representations had been true.

The damages you award must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract and/or the representations were made.

You may not award speculative or uncertain damages, but you may not deny damages merely because the amount of damages is difficult to ascertain. If there is a reasonable basis from which the amount of damages can be inferred or approximated, recovery of those damages is allowed.

In your consideration of the damages, you may consider the costs of repair, loss of use and enjoyment of the property, and out-of-pocket costs.

Instruction No. 32

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2 In arriving at your verdict, you may not consider court costs, attorney fees,
3 or interest on the award. These items are not elements of damages. The court
4 decide these issues.
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Instruction No. 33

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8 In arriving at an item of damage, you may not arrive at a figure by taking
9 down the estimate of each juror as to an item of damage and agreeing in
10 advance that the average of those estimates shall be your item of damage.
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Instruction No. 34

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14 You will be considering an award of damages in each of the claims brought
15 by Patterson. Do not let your assessment of damages in one claim affect your
16 assessment of damages in the other claims. Your assessment of damages in
17 each claim will be used by the court to determine an overall damages award.
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Instruction No. 35

1 Upon retiring you must select a foreperson. It will be the foreperson's duty
2 to see discussion is carried on in an orderly fashion, the issues are fully and
3 freely discussed, and all jurors are given an opportunity to express their views.
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5 Your attitude at the beginning of your deliberations is important. It is not a
6 good idea for you to take a position before thoroughly discussing the case with
7 the other jurors. If you do this, individual pride may become involved, and you
8 may later hesitate to change an announced position even if shown it may be
9 incorrect. Remember you are not partisans or advocates; you are judges –
10 judges of the facts. Your sole interest is to find the truth and do justice.
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Instruction No. 36

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 that these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and they may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

Instruction No. 37

Occasionally, jurors have questions after they begin to deliberate. I have prepared these instructions after carefully considering the case with the parties and the attorneys. I have tried to use generally-understandable language. Usually, questions about instructions can be answered by carefully re-reading these instructions. If, however, you feel it necessary to ask a question, you may do so in writing. I cannot communicate with you without first discussing your question and potential answer with the parties and attorneys. This naturally takes time and consideration before I can reply. Please know that I will often not be able to give you further instructions, and there will be no additional evidence.

The court attendant who has been working with us in 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 any questions.

If you need to notify anyone about the time you will be deliberating, for example, a spouse, babysitter, or employer, please notify the court attendant before you begin your deliberations – or in writing if it is during deliberations – and we will make a phone available to you for that purpose.

Finally, if you have any personal communication device like a mobile phone, smart watch, or paging device, you must leave those with the court attendant and not take them into the jury room while deliberating.

Instruction No. 38

I am giving you a verdict form with questions for you to answer. During the first six hours of deliberations, your decision must be unanimous. If you all agree, the verdict must be signed by your foreperson.

After deliberating for six hours, 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.

Dated this May 22, 2025



Colleen D. Weiland
Judge of the Second Judicial District of Iowa