

## IN THE IOWA DISTRICT COURT FOR BUTLER COUNTY

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| HOTH GRAIN STRUCTURES, INC.,<br><br>Plaintiff,<br><br>vs.<br><br>JOHN McCANDLESS and BALLYNACREE FARMS,<br>LLC,<br><br>Defendants. | No. CVCV021986    |
| BALLYNACREE FARMS, LLC,<br><br>Counterclaimant,<br><br>vs.<br><br>HOTH GRAIN STRUCTURES, INC.,<br><br>Counterclaim Defendant.      | JURY INSTRUCTIONS |

Members of the Jury: In this case Plaintiff Hoth Grain Structures, Inc., claims Defendant John McCandless and/or Defendant Ballynacree Farms, LLC, breached their contract with Hoth Grain Structures, Inc., by failing to make payment on an invoice for labor and materials furnished for the relocation of grain bins. To the extent Hoth Grain Structures, Inc., did not complete the entire contract, Hoth Grain Structures, Inc., contends it was excused from completing the entire contract.

Defendant John McCandless contends that he did not enter into a contract with Plaintiff Hoth Grain Structures, Inc. Additionally, Defendants John McCandless and Ballynacree Farms, LLC, are legally excused from their payment obligations and are entitled to damages because Plaintiff Hoth Grain Structures, Inc., failed to complete the project it was hired to do within a reasonable period of time.

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. 1

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, fears, 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. 2

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. 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 parties.
4. Any other matter admitted.

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

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

## INSTRUCTION NO. 5

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. 6

You have heard evidence claiming parties made statements before this trial while not 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 parties had made it under oath during the trial.

If you find such a statement was made and was inconsistent with party's testimony during 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 party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

## INSTRUCTION NO. 7

To prevail on its claim, Plaintiff Hoth Grain Structures, Inc., must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The terms of the contract.
4. The Plaintiff Hoth Grain Structures, Inc., has done what the contract requires. To the extent Plaintiff has not completed the entire contract, Plaintiff contends it was excused from completing the entire contract as explained in Instruction No. 8.
5. The Defendant Ballynacree Farms, LLC, and/or Defendant John McCandless breached the contract.
6. The amount of any damage Defendant Ballynacree Farms, LLC, and/or Defendant John McCandless caused.

If the Plaintiff Hoth Grain Structures, Inc., has failed to prove any of these propositions, the Plaintiff Hoth Grain Structures, Inc., is not entitled to damages. If the Plaintiff Hoth Grain Structures, Inc., has proved all of these propositions, then you will consider the defense of legal excuse as explained in Instruction No. 11.



## INSTRUCTION NO. 8

Plaintiff Hoth Grain Structures, Inc., claims that its obligation to complete its entire performance under the contract was excused because of the Defendants' material breach of the parties' contract.

Plaintiff claims part of its performance was excused because Defendants failed to fully pay amounts that were due. This alleged failure by the Defendants must be material.

In determining whether the alleged failure to perform was material, you must consider Instruction No. 16, which sets forth the circumstances to determine whether the alleged failure was material.

## INSTRUCTION NO. 9

Plaintiff brings this case against both John McCandless and Ballynacree Farms, LLC. If you decide that Plaintiff can recover damages, the judgment must only be against John McCandless or against Ballynacree Farms, LLC, but not both. If you find that there was a contract between Plaintiff and John McCandless, then there was not a contract between Plaintiff and Ballynacree Farms, LLC. Conversely, if you find that there was a contract between Plaintiff and Ballynacree Farms, LLC, then there was not a contract between Plaintiff and John McCandless.

## INSTRUCTION NO. 10

To prevail on its counterclaim, Defendant Ballynacree Farms, LLC, must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The terms of the contract.
4. The Defendant Ballynacree Farms, LLC, has been excused from doing what the

contract requires as explained in Instruction No. 11.

5. The Plaintiff Hoth Grain Structures, Inc. breached the contract.
6. The amount of any damage Plaintiff Hoth Grain Structures, Inc., caused.

If the Defendant Ballynacree Farms, LLC, has failed to prove any of these propositions, the Defendant Ballynacree Farms, LLC, is not entitled to damages. If the Defendant Ballynacree Farms, LLC, has proved all of these propositions, Defendant Ballynacree Farms, LLC, is entitled to damages in some amount.

## INSTRUCTION NO. 11

Defendant Ballynacree Farms, LLC, and Defendant John McCandless claim their performance was excused because of Plaintiff Hoth Grain Structures, Inc.'s, material breach of the parties' contract.

If Defendant Ballynacree Farms, LLC, and Defendant John McCandless proved Plaintiff Hoth Grain Structures, Inc., materially breached the parties' contract, then you shall find for the Defendant Ballynacree Farms, LLC, and Defendant John McCandless on Plaintiff Hoth Grain Structures, Inc.'s, breach of contract claim.

If Defendant Ballynacree Farms, LLC, and Defendant John McCandless failed to prove Plaintiff Hoth Grain Structures, Inc., breached the parties' agreement, then you shall decide whether the Plaintiff Hoth Grain Structures, Inc., is entitled to recover damages on its breach of contract claim.

Defendants claim their performance under the contract was excused because Hoth Grain Structures, Inc., failed to timely perform Hoth Grain Structures, Inc.'s, obligation under the contract. Hoth Grain Structures, Inc.'s, alleged failure to timely perform must be material.

In determining whether the alleged failure to perform was material, you must consider Instruction 16, which sets forth the circumstances to determine whether the alleged failure was material.

## INSTRUCTION NO. 12

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.

## INSTRUCTION NO. 13

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. 14

When a contract fails to specify time for performance, the parties must perform their contractual obligations within a reasonable time.

INSTRUCTION NO. 15

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



## INSTRUCTION NO. 16

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 the consideration until they have performed as agreed.

However, a plaintiff 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 (subject to a defendant's claim for partial breach). In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

1. The extent to which Defendant will be deprived of the benefit which Defendant reasonably expected.
2. The extent to which Defendant can be adequately compensated for the part of that benefit of which Defendant will be deprived.
3. The extent to which Plaintiff will suffer forfeiture.
4. The likelihood that Plaintiff will cure the failure, taking account of all the circumstances including any reasonable assurances.

The extent to which the behavior of the Plaintiff is in line with standards of good faith and fair dealing.

## INSTRUCTION NO. 17

The measure of damages for breach of a contract is an amount that would place the non-breaching 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:

- a. The amount owed to Hoth Grain Structures, Inc., under the contract between it and John McCandless or Ballynacree Farms, LLC;
- b. The amount Ballynacree Farms, LLC, spent to complete the work under Hoth Grain Structure, Inc.'s, contract after it ceased working; and
- c. The amount Ballynacree Farms, LLC, spend on McCandless Farms during the harvest of 2022.

## INSTRUCTION NO. 18

You do not have to determine whether the Plaintiff's finance charge was appropriate.  
Whether a finance charge is imposed is a legal matter to be decided by the Court after trial.  
Decide this case without regard to any claim for finance charges.

## INSTRUCTION NO. 19

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

## INSTRUCTION NO. 20

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. 21

Occasionally jurors want to ask a question after they begin deliberating. If that should occur, please consider the following:

1. Words not defined in these instructions should be given their ordinary meaning.
2. There will be no additional evidence and likely no additional instruction of law. These instructions contain all the law you need to decide this case.
3. If you ask me a question during your deliberations, the foreperson must reduce the question to writing and give it to the court attendant, who will deliver it to me. I must then contact the lawyers and conduct a hearing with them but not in your presence. After that, I will give you an answer consistent with subparagraphs (1) and (2) above.

If, after considering these matters, you still wish to ask me a question, follow the procedure outlined here, then save your written question and any written answer I send you and return them with your verdict form when you have completed your deliberations and returned a verdict.

## INSTRUCTION NO. 22

Upon retiring you shall select a foreperson. 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. 23

I am giving you one verdict form containing several 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 to the answers to the questions, the verdict will be signed by the person you select as foreperson.

After deliberating for six hours after 10:10 o'clock 9.m. on this date, excluding meals or recesses outside your jury room, then it is necessary that 7 of you agree upon the verdict. In that case the verdict must be signed by all jurors who are in agreement.

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

Dated at Allison, Iowa, on this 9<sup>th</sup> day of May, 2024.



Rustin Davenport  
Judge of the Second Judicial District of Iowa