

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KRISTIE BEATTIE, Plaintiff, vs. COLDWELL BANKER MID-AMERICA, Defendant.	Case No. LACL155107 STATEMENT OF THE CASE, JURY INSTRUCTIONS AND VERDICT FORM
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STATEMENT OF THE CASE**Members of the Jury:****INSTRUCTION NO. 1**

In this case, the Plaintiff, Kristie Beattie, claims that she has incurred economic losses resulting from the construction of a single-family dwelling located in Ankeny, Iowa. Specifically, Ms. Beattie claims Coldwell Banker Mid-America committed consumer fraud by endorsing the fraudulent actions of JNC Builders, LLC and/or Nick Stephenson. Ms. Beattie originally asserted claims of breach of warranty, breach of contract, fraudulent misrepresentation, and consumer fraud against JNC Builders, LLC and Nick Stephenson. JNC Builders, LLC and Nick Stephenson have been released from this case.

The Defendant Coldwell Banker Mid-America has denied the claims of the Plaintiff and have asserted affirmative defenses.

Do not consider this summary as proof of any claim. Decide the facts upon the evidence and the law I will now give to you.

2024 NOV 20 PM 4:17
CLERK OF DISTRICT COURT
POLK COUNTY, IOWA

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

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).

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

In this case, there are two parties. The Plaintiff Kristie Beattie will be referred to hereafter as the “Plaintiff”. The Defendant Coldwell Banker Mid-America will be referred to hereafter as the “Defendant”.

INSTRUCTION NO. 5

The fact that a plaintiff or defendant is a limited liability company or a corporation should not affect your decision. All persons are equal before the law, and limited liability companies and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 6

Unless you are instructed differently, whenever a party must prove something, they must do so by a preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend on the number of witnesses testifying for one side or the other or the number of exhibits any party has admitted into evidence.

INSTRUCTION NO. 7

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. 8

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. 9

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. 10

The Plaintiff's claim against Coldwell Banker Mid-America is for consumer fraud.

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

1. Coldwell Banker Mid-America engaged in a practice or act it knew or reasonably should have known was an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact;

2. Coldwell Banker intended that Plaintiff rely upon the unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact in connection with the advertisement or sale of consumer merchandise;

3. The practice or act related to a material fact.

If the Plaintiff has failed to prove any of these propositions by a preponderance of the evidence, you should find for the Defendant.

INSTRUCTION NO. 11

Concerning instruction No.10, “deception” means an act or practice that is likely to mislead a substantial number of consumers as to a material fact or facts.

INSTRUCTION NO. 12

Concerning instruction No.10, “consumer merchandise” means merchandise offered for sale or lease, or sold or leased, primarily for personal, family, or household purposes. “Merchandise” includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.

INSTRUCTION NO. 13

Concerning instruction No.10, if the Plaintiff is alleging an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, the Plaintiff must prove that the prohibited practice related to a material fact or facts. To prove something is “material”, the Plaintiff must prove the following:

1. A reasonable person would consider it as important in making a decision;
2. That the Defendant knew or had reason to know the Plaintiff was likely to consider the representation as important in making a decision;
3. The representation influences a person to enter in a transaction which would not have otherwise occurred.

INSTRUCTION NO. 14

Concerning instruction No.10, “unfair practice” means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

INSTRUCTION NO. 15

Concerning instruction No.10, an “advertisement” includes the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

INSTRUCTION NO. 16

If you find Coldwell Banker Mid-America committed consumer fraud as set forth in Instruction No. 10, Coldwell Banker Mid-America shall not be liable to the Plaintiff if it shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error.

INSTRUCTION NO. 17

If you find Coldwell Banker Mid-America committed consumer fraud as set forth in Instruction No. 10, and you find that Coldwell Banker Mid-America did not show that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error as set forth in Instruction No. 16, then the Plaintiff may recover her actual damages. “Actual damages” means all compensatory damages proximately caused by the prohibited practice or act that are reasonably ascertainable in amount. “Actual damages” do not include damages for bodily injury, pain and suffering, mental distress, or loss of consortium, loss of life, or loss of enjoyment of life.

INSTRUCTION NO. 18

The measure of damages for consumer fraud is an amount that will reimburse Plaintiff for the loss caused by her reliance on the Defendant's unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact and will place her in as good a position as if the unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact had not been made.

The damages you award for consumer fraud must be foreseeable or have been reasonably foreseen at the time the unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact was made.

INSTRUCTION NO. 19

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. 20

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. 21

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. 22

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.

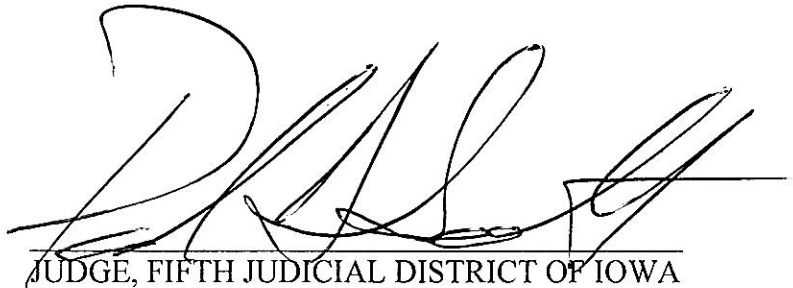
The judicial assistant has been working with me on this case and is in the same position as I am. The judicial assistant has taken an oath not to communicate with you except to ask if you have agreed upon the verdict. Please do not put my judicial assistant on the spot by asking questions. You must direct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

INSTRUCTION NO. 23

I am giving you one verdict form and three (3) 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, the verdict and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from 12:25 o'clock P.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 and questions must be signed by all seven jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Judicial Assistant.



JUDGE, FIFTH JUDICIAL DISTRICT OF IOWA