

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

ANDREW M. BOSE,

Plaintiff,

vs.

SIOUX CITY TRUCK & TRAILER, INC.,

Defendant.

LACV205399

FINAL JURY INSTRUCTIONS
AND VERDICT FORM

SIGNED THIS 26 day of September 2024.

BY THE COURT:



PATRICK H. TOTT
DISTRICT COURT JUDGE

INSTRUCTION NO. 1

Members of the Jury:

This case involves repairs made by Sioux City Truck & Trailer to a semi-truck owned by Andrew Bose. Bose's semi-truck was taken to Sioux City Truck & Trailer after it was involved in a layover accident in the later part of 2021. Mr. Bose's insurance company had the semi-truck towed to Sioux City Truck & Trailer to have repairs made to the semi-truck caused by the accident and for other upgrades to the semi-truck.

A dispute arose between Bose and Sioux City Truck & Trailer regarding the amounts charged for the repairs due to the damages from the accident as well as the upgrades requested. After Bose questioned the amounts charged and refused to pay, Sioux City Truck & Trailer asserted an Artisan's Lien against the semi-truck and would not release the semi-truck to Bose until the amounts charged were paid.

Bose asserts that Sioux City Truck & Trailer has improperly converted his semi-truck. Bose asserts that he has suffered damages for the alleged conversion and that under the circumstances of this case he should also be awarded punitive damages. Sioux City Truck & Trailer denies all of Andrew Bose's claims.

Sioux City Truck & Trailer asserts that Bose has failed to pay for the repairs performed on his truck. Bose admits that he has not made any payments for the repairs because he disputes the amounts billed and the nature of the work performed.

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.

Do not be influenced by any personal likes or dislikes, 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

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

INSTRUCTION NO. 8

The fact that a plaintiff or a 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. 9

You have heard evidence claiming that a witness 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 the witness. 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. 10

You have heard evidence claiming that a witness 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

Conversion is the wrongful control or dominion over another's property contrary to that person's possessory right to the property. The wrongful control must amount to a serious interference with the other person's right to control the property. Good faith by Sioux City Truck & Trailer is a factor to consider in determining whether the interference amounts to a conversion.

INSTRUCTION NO. 12

In order for Andrew Bose to recover for his claim of conversion, he must prove all of the following elements:

1. Andrew Bose's ownership or other possessory right to the semi-truck was greater than Sioux City Truck & Trailer's possessory right to the semi-truck.

2. Sioux City Truck & Trailer's exercise of dominion or control over the semi-truck was inconsistent with, and in derogation of, Andrew Bose's possessory rights to the semi-truck.

3. The nature and extent of the damage caused.

If Andrew Bose has failed to prove that any of these elements by a preponderance of the evidence, Sioux City Truck & Trailer is not liable for conversion. If Andrew Bose has proved all of these propositions, he is entitled to the amount of damages proven.

INSTRUCTION NO. 13

ARTISIAN LIEN

Any person who renders any service or furnishes any material in the making, repairing, improving, or enhancing the value of any inanimate personal property, with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for the service and material while such property is lawfully in the person's possession, which possession the person may retain until such compensation is paid,

INSTRUCTION NO. 14

Punitive damages may be awarded if Andrew Bose has proven by a preponderance of clear, convincing, and satisfactory evidence Sioux City Truck & Trailer's conduct constituted a willful and wanton disregard for the rights of another and caused actual damage to Andrew Bose.

Punitive damages are justified when the acts of the defendant are malicious. The malice may be actual (expressed) malice or it may be legal (implied), as where the defendant acts illegally or improperly with reckless disregard for another's rights.

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

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future. You may award punitive damages only if the defendant's conduct warrants a penalty in addition to the amount you award to compensate for Andrew Bose's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of defendant's conduct that harmed the plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay.
3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.
4. The existence and frequency of prior similar conduct by Sioux City Truck & Trailer.

INSTRUCTION NO. 15

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known right that is so great as to make it highly probable that harm will follow.

INSTRUCTION NO. 16

If you find that Andrew Bose is entitled to damages, it is your duty to determine the amount of damages. In doing so, you shall consider the following items:

1. The reasonable value of the loss of use of the semi-truck for the time reasonably required to replace it or return it to use.
2. The reasonable cost of additional repairs required to cure the defects in the repairs allegedly conducted by Sioux City Truck & Trailer, or to perform repairs Sioux City Truck & Trailer simply billed for but failed to complete altogether.
3. Any additional costs incurred by Andrew Bose to recover possession of his semi-truck.
4. Punitive Damages.

You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against either party. The amount you assess for any element of damage must not exceed the amount caused by the people or the parties as proved by the evidence. Andrew Bose may only be compensated for the actual loss sustained.

INSTRUCTION NO. 17

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. 18

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

INSTRUCTION NO. 19

Sioux City Truck & Trailer claims Andrew Bose was at fault for failing to mitigate his damages by failing to post a bond for the release of the semi-truck for approximately 13 months, until August 31, 2023.

Andrew Bose has a duty to exercise ordinary care to reduce, minimize or limit his damages. However, Andrew Bose has no duty to do something that is unreasonable under the circumstances, such as undertake action which is unreasonably expensive or intrusive.

To prove Sioux City Truck & Trailer's claim of failure to mitigate, it must prove all of the following:

1. There was something Andrew Bose could do to mitigate his damages;
2. Requiring Andrew Bose to do so was reasonable under the circumstances;
3. Andrew Bose acted unreasonably in failing to undertake the mitigating activity;
- and
4. Andrew Bose's failure to undertake the mitigating activity caused an identifiable portion of his damages.

If the defendant has proved all of these numbered propositions, then defendant has proved this defense, and you shall assign a percentage of fault to the plaintiff for the time period after the failure to mitigate. This amount will be used in answering the special interrogatory in the verdict. If the defendant has failed to prove one or more of these numbered propositions, then defendant has not proved Andrew Bose failed to mitigate his damages.

INSTRUCTION NO. 20

To prove its breach of contract claim, the Sioux City Truck & Trailer must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration for the contract.
4. The terms of the contract.
5. Sioux City Truck & Trailer has done what the contract requires.
6. Andrew Bose has breached the contract.
7. The amount of any damage Andrew Bose 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.

INSTRUCTION NO. 21

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. 22

"Consideration" is either a benefit given or to be given to the person who makes the promise or a detriment experienced or to be experienced by the person to whom the promise is made. Where the contract provides for mutual promises, each promise is a consideration for the other promise.

INSTRUCTION NO. 23

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 may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.
3. 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.

INSTRUCTION NO. 24

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

INSTRUCTION NO. 25

The law implies a promise to pay the reasonable value of services and materials a person knowingly accepts from another.

INSTRUCTION NO. 26

When a person employs someone to provide services and materials without agreeing on the amount of pay, an agreement is implied to pay the reasonable value of those services and materials.

INSTRUCTION NO. 27

The measure of damages for breach of a contract is an amount that would place Sioux City Truck & Trailer 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 that the amount of invoiced work totals \$108,578.10.

INSTRUCTION NO. 28

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. 29

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. 30

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, questions about instructions can be answered by carefully re-reading them.

If it is necessary to ask a 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 potential answer with the parties and 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.

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

I am giving you one 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 and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock _____.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 must be signed by all seven jurors who agree.

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