

IN THE IOWA DISTRICT COURT FOR MITCHELL COUNTY

MARVIN BRINCKS,

Plaintiff,

v.

CLETUS BRINCKS, INC.,

Defendant.

No. LACV015705

INSTRUCTIONS TO THE JURY**INSTRUCTION NO. 1**

Members of the Jury:

Plaintiff Marvin Brincks claims that Defendant Cletus Brincks, Inc., (CBI) breached a contract with Marvin Brincks to leave land in Mitchell County, Iowa, to Marvin Brincks.

CBI denies this claim. CBI claims that the contract is a forgery and asserts the affirmative defense that there was no consideration for the contract.

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.

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, 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.

Personal prejudices have no place in court. You must set aside and disregard any personal feelings of bias or prejudice which you may have based on sex, race, religion, national origin, age or disability. You must decide this case only on the basis of the evidence which is admitted and the law as I explain it to you.

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. 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. 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 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; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 7

Facts or testimony of claimed conversations with a person since deceased should be scrutinized jealously and weighed cautiously, and its credibility subjected to the most severe tests, for the very practical reason that the decedent is unable to relate his version or perhaps testify as to the nonexistence at all of such a fact or conversation. Such testimony must necessarily be tested by its own inherent probability or improbability, by comparison with the other evidence in the case, and by the ordinary rules of human conduct under similar circumstances.

INSTRUCTION NO. 8

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

INSTRUCTION NO. 9

You have heard evidence claiming witnesses made statements before this trial while under oath which were inconsistent with what the witnesses 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 Marvin Brincks made statements before this trial while under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if Marvin Brincks had made it under oath during the trial.

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

INSTRUCTION NO. 11

The fact that the defendant Cletus Brincks, Inc., is a corporation should not affect your decision. All person 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. 12

For Plaintiff Marvin Brincks to be successful on his claim of breach of contract, he must prove all of the following propositions:

1. The existence of a written contract.
2. The consideration.
3. The terms of the written contract.
4. The plaintiff has done what the written contract requires.
5. The defendant has breached the written contract.
6. The amount of any damage defendant 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, then you will consider the defendant's affirmative defenses as explained to you in these instructions.

INSTRUCTION NO. 13

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 to the alleged contract, together with all reasonable inferences you may draw from the surrounding circumstances.

INSTRUCTION NO. 14

“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.

A recitation of past services, especially those where there is nothing to show that payment therefore was contemplated by the parties when rendered, are insufficient to support a subsequent promise. Ordinarily there is a presumption that services of a general and unspecified nature rendered between members of a family are gratuitous.

INSTRUCTION NO. 15

If there is a written contract, then the existence of consideration is presumed. However, you must still consider Defendant's affirmative defense of lack of consideration.

INSTRUCTION NO. 16

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. 17

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

INSTRUCTION NO. 18

Defendant Cletus Brincks, Inc., claims performance was excused because of failure of consideration. If CBI proves by a preponderance of evidence that there was no consideration, then CBI has proved its affirmative defense, and your verdict must be in favor of CBI.

INSTRUCTION NO. 19

If you find there is a contract, that the contract was breached, and if Defendant has not proved its affirmative defense, then you shall consider damages.

The measure of damages for breach of contract is an amount which would place Marvin Brincks in as good of a condition as he would have enjoyed had the contract 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 consideration of damages, you may consider the fair market value of the 216 acres on April 19, 2019. Marvin Brincks has requested specific performance, or in the alternative, breach of contract damages. The basis of the specific performance claim is failure to honor a contractual obligation to make a specific bequest of the 216 acres. If an award is made for specific performance by the Court, then any award made by the jury for contract damages will be set aside.

INSTRUCTION NO. 20

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media including but not limited to text messages, Facebook, LinkedIn, YouTube, Twitter, Snapchat, Instagram, 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 will be 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. 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 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, your presiding officer 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. 23

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.

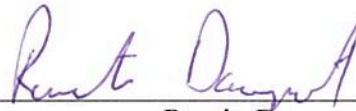
INSTRUCTION NO. 24

I am giving you one verdict form containing three 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 from 9:30 o'clock A.m., on this date, excluding meals or recesses outside your jury room, then it is necessary that six of you agree upon the answers to the questions. In that case, the verdict must be signed by all six jurors who are in agreement.

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

Dated at Osage, Iowa, on this 21 day of August, 2023.



Rustin Davenport
Judge of the Second Judicial District of Iowa