

## IN THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

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MARILYN A. FAIRCHILD,

Plaintiff,

vs.

DJBCK, INC. d/b/a  
DALTON PLUMBING, HEATING, AND  
COOLING, INC.,Defendant.

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Case No. LACV137917

**JURY INSTRUCTIONS**

Members of the Jury,

In this case Plaintiff Marilyn A. Fairchild claims Defendant DJBCK, Inc., doing business as Dalton Plumbing, Heating, and Cooling, Inc., breached a contract related to a geothermal heating, cooling, and dehumidification system and sold her a product that was not fit or suitable for Plaintiff's particular purpose. Plaintiff also claims Defendant engaged in consumer fraud. Plaintiff seeks damages on these claims.

Defendant denies these claims.

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

**ORIGINAL**

100.2

## 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. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward 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 in order to do justice.

100.3

## 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.

100.4<sub>ajd</sub>

## 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 formal agreements concerning a fact or facts made by the parties through their attorneys.

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 pretrial 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, comments, and reactions 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.



100.5

**INSTRUCTION NO. 4**

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.

100.9

## INSTRUCTION NO. 5

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 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.

100.11p

## INSTRUCTION NO. 6

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

100.12

## 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.

100.13<sub>ajd</sub>

## INSTRUCTION NO. 8

You have heard evidence claiming a witness or witnesses made statements before this trial while not under oath which were inconsistent with what the witness or witnesses said in this trial.

Because the witness or witnesses did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness or witnesses.

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.

100.15

## INSTRUCTION NO. 9

You have heard evidence claiming Plaintiff or Defendant made statements before this trial 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 the party had made it under oath during the trial.

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

100.20<sub>ajd</sub>

## INSTRUCTION NO. 10

The fact that Defendant is a corporation should not affect your decision. You must give any corporation, whether large or small, the same fair and conscientious consideration that you would give any person.

2400.1

## INSTRUCTION NO. 11

For her claim of breach of contract, Plaintiff must prove all of the following propositions:

1. The existence of a contract.
2. The consideration.
3. The terms of the contract.
4. Plaintiff has done what the contract requires.
5. Defendant has breached the contract.
6. The amount of any damage Defendant has caused.

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



2400.3d

## 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.

2400.4

## INSTRUCTION NO. 13

"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.

2400.5

## INSTRUCTION NO. 14

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.

2400.6

INSTRUCTION NO. 15

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

220.1p

## INSTRUCTION NO. 16

The measure of damages for breach of a contract is an amount that would place Plaintiff in as good a position as she 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.

1100.5

## INSTRUCTION NO. 17

Where at the time of contracting, the seller has reason to know the particular purpose for which the product or service is required and the buyer is relying on the seller's skill or judgment to select or furnish a suitable product, there is an implied warranty the goods shall be fit for the particular purpose.

1100.6

## INSTRUCTION NO. 18

For her claim of breach of implied warranty of fitness for a particular purpose, Plaintiff must prove all of the following propositions:

1. At the time of the sale, Defendant had reason to know the particular purpose of the product.
2. Defendant had reason to know Plaintiff was relying on Defendant's skill or judgment to select or furnish the product.
3. Plaintiff relied upon Defendant's skill or judgment.
4. The product was not fit for the particular purpose.
5. The failure of the product to fit the particular purpose was a cause of Plaintiff's damage.
6. The amount of damage.

If Plaintiff has failed to prove any of these propositions, Plaintiff is not entitled to damages.

If Plaintiff has proved all of these propositions, Plaintiff is entitled to damages in some amount.

1100.7

## INSTRUCTION NO. 19

When the ordinary purpose of a product is the same as the buyer's particular purpose, the buyer must still prove the seller knew the buyer's particular purpose and the buyer was relying on the seller's skill and judgment to furnish a suitable product or service.

No specific conversation between the parties is necessary with respect to the particular purpose. The particular purpose may arise from the facts and circumstances surrounding the transaction or past transactions between the parties.



1100.8

## INSTRUCTION NO. 20

It is not enough that the buyer relied upon the general reputation or integrity of the seller. It must appear the seller had special skill or judgment regarding the product and its intended use, and the buyer relied upon the seller's special skills or judgment.

The buyer's reliance on the seller's skill or judgment need not be a total reliance. The buyer may rely partly on her own judgment and partly on the seller's skill and judgment.

## INSTRUCTION NO. 21

For her claim of consumer fraud, Plaintiff must prove all of the following propositions:

1. Defendant or its representative engaged in a practice or act that Defendant or its representative knew, or reasonably should have known, was either
  - (A) a false promise related to a material fact,

OR

  - (B) a misrepresentation, concealment, suppression, or omission of a material fact.
2. Defendant or its representative intended for Plaintiff to rely upon the false promise, misrepresentation, concealment, suppression, or omission in connection with the sale of consumer merchandise.
3. The conduct of Defendant or its representative caused Plaintiff to suffer a loss of money or property.
4. The amount of money or property lost by Plaintiff.

If Plaintiff has failed to prove any of these propositions, Plaintiff is not entitled to damages for her claim of consumer fraud. If Plaintiff has proved all of these propositions, Plaintiff is entitled to damages in some amount for her claim of consumer fraud.

## INSTRUCTION NO. 22

A fact is “material” if it is important, significant, or essential to the matter at hand. A fact is material when it influences a person to enter into a contract or when, without it, a transaction would not have occurred.

## INSTRUCTION NO. 23

“Consumer merchandise” is merchandise offered for sale or lease, or sold or leased, primarily for personal, family, or household purposes.

The term “merchandise” includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.

## INSTRUCTION NO. 24

The conduct of Defendant or its representative is a cause of damage or loss when the damage or loss would not have happened except for the conduct.

200.38p

## INSTRUCTION NO. 25

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 will be your item of damage.

## INSTRUCTION NO. 26

Punitive damages may be awarded if Plaintiff has proven by a preponderance of clear, convincing, and satisfactory evidence that Defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to Plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage Defendant and others from like conduct in the future. You may award punitive damages only if Defendant's conduct warrants a penalty in addition to the amount you award to compensate for Plaintiff'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 Plaintiff.
2. The amount of punitive damages that will punish and discourage like conduct by Defendant. You may consider Defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of Defendant's wealth or ability to pay.
3. Plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to Plaintiff.
4. The existence and frequency of prior similar conduct.

100.19

INSTRUCTION NO. 27

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



210.4p

## INSTRUCTION NO. 28

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

ajd

## INSTRUCTION NO. 29

The court has not by its instructions or by any ruling made, or by any act done, or by anything said during the trial, or by any facial expression, gesture, or tone of voice, intended or attempted to give any intimation or opinion as to what the facts are or what are not the facts, what the proof is or what it is not, or what your verdict should be. During the trial, the court has ruled upon objections to evidence which have been made by counsel. Such rulings are the sole responsibility of the court. In your consideration of the case, you will give no significance or weight whatsoever to such rulings. You will consider only the evidence which has been received before you as part of the record in this case.

100.18<sub>ajd</sub>

## INSTRUCTION NO. 30

Upon retiring you shall select a presiding juror. 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 in order to do justice.

100.21

## INSTRUCTION NO. 31

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.

100.23

## INSTRUCTION NO. 32

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

ajd

## INSTRUCTION NO. 33

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

- A. Words not defined in these instructions should be given their ordinary meanings.
- B. There will be no additional evidence and no additional instructions on the law. These instructions contain all the law you need to decide the case.
- C. If you ask me a question during your deliberations, your presiding juror 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 send you a written answer consistent with subparagraphs (A) and (B).

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

The court attendant who has been working with me on this case is in the same position I am. She has taken an oath not to communicate with you except to ask you if you have agreed upon a verdict. Please do not put her on the spot by asking her any questions. You should direct any questions to the court and not to the court attendant.

300.1

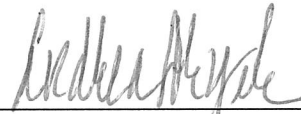
## INSTRUCTION NO. 34

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, the verdict and answers to questions must be signed by your presiding juror.

After deliberating for six hours from 2:04 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 the form, please tell the court attendant.

Dated May 21, 2021



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Andrea Dryer, Judge  
First Judicial District of Iowa