

IN THE DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

MARILYN A. FAIRCHILD,

Plaintiff,

v.

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

Defendant.

CASE NO. LACV137917

**PLAINTIFF'S FIRST PROPOSED JURY
INSTRUCTIONS**

COMES NOW the Plaintiff and hereby submits her Proposed Jury Instructions. Plaintiff reserves the right to submit revised and/or additional jury instructions, as may be required, to accommodate evidence proffered by opposing counsel, evidence introduced during the course of the trial, and rulings by the trial judge, up until the time this case is submitted to the jury.

Respectfully submitted,

DUTTON, DANIELS, HINES, KALKHOFF,
COOK & SWANSON, P.L.C.

Attorneys for Plaintiff

BY: /s/Erich D. Priebe

Erich D. Priebe, AT0012350

3151 Brockway Road

P.O. Box 810

Waterloo, IA 50704

(319) 234-4471

(319) 234-8029 FAX

Email: epriebe@duttonfirm.com

Henry J. Bevel, III
Swisher & Cohrt, P.L.C.
528 West 4th St.
P.O. Box 1200
Waterloo, IA 50704
Attorney for Defendants

Judge Andrea Dryer
Andrea.Dryer@iowacourts.gov

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on May 17, 2021.

By: ☐ U.S. Mail ☐ Fax
☐ Hand Delivered ☐ UPS
☐ Federal Express ☐ E-mail
☒ EFC or EDMS System Participant (Electronic Service)

Signature: /s/Jamie Showalter

1. Proposed Uniform Jury Instructions:

No.	Title	Iowa Civil Jury Instruction No.
1	Duties of Judge and Jury, Instructions as a Whole	100.2
2	Burden of Proof, Preponderance of Evidence	100.3
3	Evidence	100.4
4	Deposition Testimony	100.5
5	Interrogatory	100.6
6	Credibility of Witnesses	100.9
7	Hypothetical Question, Expert Testimony	100.11
8	Opinion Evidence, Expert Witness	100.12
9	Contradictory Statement, Non-party, Witness	100.13
10	Contradictory Statement, Non-party, Witness	100.14
11	Statements by a Party Opponent	100.15
12	Cautionary Instruction — Juror's Notes	100.21
13	General Instruction to Jury	100.18
14	Clear, Convincing, and Satisfactory Evidence	100.19
15	Use of Electronic Devices	100.23
16	Quotient Verdict	200.38
17	Willful and Wanton – Defined	210.4
18	Breach of Contract/Fraud Expectation Interest	220.1
19	Return of Verdict — Forms of Verdict	300.1
20	Implied Warranty of Fitness	1100.5
21	Essentials for Recovery – Implied Warranty	1100.6
22	Fitness – Particular Purpose	1100.7
23	Reliance – Particular Purpose	1100.8
24	Breach of Contract – Essentials for Recovery	2400.1
25	Terms – Interpretation	2400.5
26	Breach – Definition	2400.6

II. Proposed Other Jury Instructions:

INSTRUCTION NO. _____

100.1 Statement of the Case.

Members of the Jury,

This case is about the sale of a climate control system for the home of the Plaintiff, Marilyn Fairchild. Ms. Fairchild alleges that the system sold by Defendant Dalton Plumbing, Heating & Cooling through former employee Aaron Junker cannot function as promised and has damaged her home. Ms. Fairchild asserts in this lawsuit that Dalton and its salesperson, Mr. Junker, misrepresented the product sold to her and that Defendant committed a “consumer fraud” under Iowa law.

Defendant denies these allegations. Defendant asks you to find against Ms. Fairchild on her claims. Defendant also asks for the Court to dismiss this lawsuit.

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.

INSTRUCTION NO. _____

Essentials for Recovery – Consumer Fraud.

To prevail on her claim of Consumer Fraud, the Plaintiff must prove all of the following by a preponderance of the evidence:

1. The Defendant or its representative engaged in an unfair practice, or used fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission of a material fact connection with the sale of the Bosch “geothermal” system to Plaintiff.
2. The Defendant or its representative knew or reasonably should have known that it engaged in such an act.
3. The conduct of the Defendant or its representative caused damage to the Plaintiff.
4. The amount of damages

INSTRUCTION NO. _____

Fraud -- Defined.

Defendant committed a fraud if Defendant or its representative made a knowing misrepresentation or knowing concealment of a material fact and did so to induce Plaintiff to act to her detriment.

Iowa Code § 714H.3
Black's Law Dictionary (11th ed. 2019), "Fraud" (14c).

INSTRUCTION NO. _____

Material Fact – Defined.

A fact is “material” if it is important, significant or essential to the matter at hand. A fact is considered “material,” for example, if it would have influence on a person’s decision to enter a contract or to take some specific action.

Iowa Code § 714H.3

Black’s Law Dictionary (11th ed. 2019), “Material Fact” (1848)

Wilden Clinic, Inc. v. City of Des Moines, 229 N.W.2d 286 (Iowa 1975)

INSTRUCTION NO. _____

Unfair Practice -- Defined.

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.

Iowa Code § 714.16(n)

INSTRUCTION NO. _____

Causation – Defined.

To determine whether a Defendant caused the Plaintiff’s harm, you should apply a “but for” test. If, for example, the Plaintiff’s harm would not have occurred but-for the Defendant’s conduct,” then that conduct is a cause in fact of the harm produced.

Iowa Code § 714H.5(1)

Deng v. White, 2019 WL 6358427, No. 18-1672 at *5 (Iowa Ct. App. Nov. 27, 2019)

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Defendant.

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PROPOSED VERDICT FORM

We the jury find the following verdict on the questions submitted to us:

QUESTION NO. 1: Did Defendant breach its contract with Plaintiff for the sale and installation of a geothermal system?

Answer "yes" or "no."

ANSWER: _____

Proceed to Question No. 2.

QUESTION NO. 2: Did Defendant sell Plaintiff a product that was not fit or suitable for Plaintiff's particular purpose?

Answer "yes" or "no."

ANSWER: _____

If your answer is "yes", then proceed to Question No. 3. If your answer is "no", then proceed to Question No. 4.

QUESTION NO. 3: Was the failure of the product to fit the particular purpose a cause of Plaintiff's damage?

Answer "yes" or "no."

ANSWER: _____

Proceed to Question No. 4.

QUESTION NO. 4: Did Defendant engage in a “consumer fraud” in connection with the sale of the “geothermal system” to Plaintiff?

Answer “yes” or “no.”

ANSWER: _____

If your answer is “yes”, then proceed to Question No. 5. If your answer is “no”, then proceed to Question No. 6.

QUESTION NO. 5: Did Defendant’s consumer fraud cause Plaintiff harm?

Answer “yes” or “no.”

ANSWER: _____

Proceed to Question No. 6.

QUESTION NO. 6: If your answer to Question Nos. 1, 3 or 5 was “yes”, then please state the amount of damages Plaintiff suffered due to Defendant’s actions. If your answer to Question Nos. 1, 3 and 5 was “no”, then do not answer any further questions.

ANSWER:

- A. Costs to install a replacement system: _____
- B. Refund of invoices paid by Defendant for service and diagnostic work: _____
- C. Cost to repair pool room due to excess humidity: _____
- D. Increase in utility bills: _____
- E. Other damages resulting from Defendant’s conduct: _____

Proceed to Question No. 7.

QUESTION NO. 7: [RESPOND ONLY IF YOU ANSWERED “YES” TO QUESTION 5]

Do you find by a preponderance of clear, convincing, and satisfactory evidence that Defendant’s “consumer fraud” constituted a willful and wanton disregard for the rights of another?

Answer “yes” or “no.”

ANSWER: _____

If your answer is “yes”, then proceed to Question No. 8.

QUESTION NO. 8: If your answer to Question No. 7 is “Yes,” then what additional amount, if any, should be paid by Defendant for committing a willful and wanton consumer fraud? This additional amount shall not exceed three times the amount of the damages identified in Question No. 6.

ANSWER: _____

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.