

Original

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

AMERICAN WAGYU BREEDERS, LLC,

Plaintiff,

vs.

ERIC BAILEY and SARAH BAILEY,

Defendants.

Case No. LACV081247

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the Jury: In this case the Plaintiff is American Wagyu Breeders, LLC. The Defendants are Sarah Bailey and Eric Bailey. Plaintiff claims Defendants breached a contract between the parties and made fraudulent misrepresentations to Plaintiff, causing damages to Plaintiff.

The Defendants deny they breached a contract between the parties or made fraudulent misrepresentations to Plaintiff. The Defendants deny they caused damages to Plaintiff.

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.

FILED

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CLERK OF DISTRICT COURT
JOHNSON 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.

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.

INSTRUCTION NO. 3

Whenever a party must prove a claim of breach of contract, 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.

Whenever a party must prove a claim of fraudulent misrepresentation and/or punitive damages, they must do by clear, convincing and satisfactory evidence. Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

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 or shown by video 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.

Certain testimony has also been presented to you live from a witness who is not physically present in this courtroom through remote videoconference technology. Consider that testimony as if had been given in court.

INSTRUCTION NO. 6

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. 7

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

INSTRUCTION NO. 9

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.

INSTRUCTION NO. 10

You have heard evidence claiming certain parties to this lawsuit made statements before this trial while under oath and 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 that party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of that party's testimony during the trial but you are not required to do so. You should not disregard that party's 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 a party is a company should not affect your decision. All persons are equal before the law, and companies, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 12

Plaintiff claims that Defendants breached the Livestock Agreement dated November 25, 2012. In order to prevail on this claim, Plaintiff must prove all of the following propositions:

1. The terms of the Livestock Agreement.
2. Plaintiff has done what the Livestock Agreement requires.
3. Defendants breached the Livestock Agreement in one or more of the following ways:
 - a. failing to return Michiyoshi upon termination of the Livestock Agreement;
 - b. failing to provide proper and humane care for Michiyoshi; or
 - c. failing to notify Plaintiff of Michiyoshi's death.
4. The amount of any damage Defendants have 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.

INSTRUCTION NO. 13

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. 14

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

INSTRUCTION NO. 15

The measure of damages for breach of a contract is an amount that would place Plaintiff in as good a position as it 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 the following:

1. The reasonable market value of Michiyoshi.
2. Loss of profits from the collection and sale of Michiyoshi semen.

INSTRUCTION NO. 16

Plaintiff claims that Sarah Bailey made one or more fraudulent misrepresentations. In order to prevail on this claim, Plaintiff must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. That Sarah Bailey, between November 25, 2012 and June 19, 2015, made one or more of the following representations to Plaintiff:
 - a. that Michiyoshi was alive;
 - b. that Michiyoshi was on Defendants' farm and in Defendants' possession;
 - c. that pictures Defendants sent to Plaintiff were of Michiyoshi; or
 - d. that the bull Defendants returned to Plaintiff was Michiyoshi.
2. The representation was false.
3. The representation was material.
4. Sarah Bailey knew the representation was false.
5. Sarah Bailey intended to deceive Plaintiff.
6. Plaintiff acted in reliance on the truth of the representation and was justified in relying on the representation.
7. The representation was a cause of Plaintiff's damage.
8. 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.

INSTRUCTION NO. 17

Plaintiff claims that Eric Bailey made one or more fraudulent misrepresentations. In order to prevail on this claim, Plaintiff must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. That Eric Bailey, between November 25, 2012 and June 19, 2015, made one or more of the following representations to Plaintiff:
 - a. that Michiyoshi was alive;
 - b. that Michiyoshi was on Defendants' farm and in Defendants' possession;
 - c. that pictures Defendants sent to Plaintiff were of Michiyoshi; or
 - d. that the bull Defendants returned to Plaintiff was Michiyoshi.
2. The representation was false.
3. The representation was material.
4. Eric Bailey knew the representation was false.
5. Eric Bailey intended to deceive Plaintiff.
6. Plaintiff acted in reliance on the truth of the representation and was justified in relying on the representation.
7. The representation was a cause of Plaintiff's damage.
8. 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.

INSTRUCTION NO. 18

Concerning proposition no. 1 of Instruction Nos. 16 and 17, “a representation” is any word or conduct asserting the existence of a fact. It may include silence if Eric Bailey and/or Sarah Bailey fail to disclose information which Eric and/or Sarah Bailey had a duty to disclose and which Plaintiff has reason to believe will be disclosed.

INSTRUCTION NO. 19

Concerning proposition no. 3 of Instruction Nos. 16 and 17, a representation is “material” if:

1. A reasonable person would consider it as important in making a decision.
2. Eric Bailey and/or Sarah Bailey knew or had reason to know that Plaintiff considers, or is likely to consider, the representation as important in making a decision.
3. The representation influences a person to enter into a transaction which would not have occurred otherwise.

INSTRUCTION NO. 20

Concerning proposition no. 4 of Instruction Nos. 16 and 17, Eric Bailey and/or Sarah Bailey knew the representation was false if any of the following situations existed:

1. Eric Bailey and/or Sarah Bailey actually knew or believed the representation was false.
2. Eric Bailey and/or Sarah Bailey made the representation without belief in its truth or in reckless disregard of whether it was true or false.
3. Eric Bailey and/or Sarah Bailey falsely stated or implied that the representation was based on his/her personal knowledge or investigation.
4. Eric Bailey and/or Sarah Bailey made a representation which he/she knew or believed was materially misleading because it left out unfavorable information.
5. Eric Bailey and/or Sarah Bailey stated his/her intention to do or not to do something when he/she did not actually have that intention.
6. Eric Bailey and/or Sarah Bailey knew the representation could be understood in both a true and false manner, and made the representation (a) intending that it be understood in the false sense, (b) having no belief as to how it would be understood, or (c) in reckless disregard of how it would be understood.
7. Eric Bailey and/or Sarah Bailey's special relationship of trust and confidence to Plaintiff or special source of information made it Defendants' duty to know whether the representation was true or false.

INSTRUCTION NO. 21

Concerning proposition no. 5 of Instruction Nos. 16 and 17, Eric Bailey and/or Sarah Bailey intended to deceive Plaintiff if any of the following situations existed when he/she made a representation:

1. Eric Bailey and/or Sarah Bailey wanted to deceive Plaintiff or believed that Plaintiff would in all likelihood be deceived.
2. Eric Bailey and/or Sarah Bailey had information from which a reasonable person would conclude that Plaintiff would be deceived.
3. Eric Bailey and/or Sarah Bailey made the representation without concern for the truth.

INSTRUCTION NO. 22

Concerning proposition no. 6 of Instruction Nos. 16 and 17, Plaintiff must rely on the representation and the reliance must be justified.

It is not necessary that the representation be the only reason for Plaintiff's action. It is enough if the representation was a substantial factor in bringing about the action.

Whether reliance is justified depends on what Plaintiff can reasonably be expected to do in light of their own information and intelligence. Reliance is not justified if the representation is of an unimportant fact or is obviously false.

INSTRUCTION NO. 23

The measure of damages for fraudulent misrepresentation is an amount that would place Plaintiff in as good a position as it would have enjoyed if the fraudulent misrepresentation had been true.

The damages you award for fraudulent misrepresentation must be foreseeable or have been reasonably foreseen at the time the representation was made.

In your consideration of the damages, you may consider the following:

1. The reasonable market value of Michiyoshi.
2. Loss of profits from the collection and sale of Michiyoshi semen.

INSTRUCTION NO. 24

Whenever two or more persons commit fraudulent misrepresentation in concert, each becomes subject to liability for the acts of the others as well as for his/her own acts.

In order for Plaintiff to prove Defendants acted in concert, Plaintiff must prove one of the following propositions:

1. Eric Bailey and Sarah Bailey agreed and acted in cooperation for a fraudulent misrepresentation. Such agreement to act in concert need not be expressed in words but may be implied and understood to exist from conduct itself; or

2. Eric Bailey or Sarah Bailey knew that the other Defendant's conduct would be a fraudulent misrepresentation and gave substantial assistance or encouragement to that Defendant to make a fraudulent misrepresentation. If the encouragement or assistance was a substantial factor, not just a slight factor, in causing the resulting fraudulent misrepresentation, the encouraging or assisting Defendant—Eric Bailey or Sarah Bailey, as the case may be—is responsible for the consequences of the other Defendant's acts.

If Plaintiff failed to prove one of the propositions above, the Plaintiff has not established that Eric Bailey and Sarah Bailey acted in concert.

INSTRUCTION NO. 25

Punitive damages may be awarded if Plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence Eric Bailey and/or Sarah Bailey'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 Defendants and others from like conduct in the future. You may award punitive damages only if Eric Bailey and/or Sarah Bailey'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 Eric Bailey and/or Sarah Bailey's conduct that harmed Plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by Eric Bailey and/or Sarah Bailey. You may consider Eric Bailey and/or Sarah Bailey's financial condition or ability to pay. You may not, however, award punitive damages solely because of Eric Bailey and/or Sarah Bailey'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.

INSTRUCTION NO. 26

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.

INSTRUCTION NO. 27

In arriving at an item of damage or a percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. 28

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. 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

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. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. 31

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 your questions about the instructions can be answered by carefully re-reading them. If, however, you feel it necessary to ask a question, you must do so in writing. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers.

The court attendant who has been working with me on this case is in the same position as I am. He/she takes an oath not to communicate with you about the substance of the case. He/she should not speak to you except to ask if you have agreed upon a verdict, and to manage the logistics of your service. Please do not put him/her on the spot by asking any questions about the instructions or the evidence. Jurors like to know how long they will deliberate each day. Normally I leave that up to you. Please notify the court attendant in writing how long you would like to work and how early you would like to reconvene, if that is necessary.

Finally, if you need to notify anyone about the time you will be deliberating, please notify the court attendant and we will make a phone available to you. Before you enter the jury room, give your cell phones to the court attendant for safekeeping. Cell phones are not allowed in the jury room. The cell phones will be returned to their owners when the jury deliberations are concluded or when you leave the courthouse for the day.

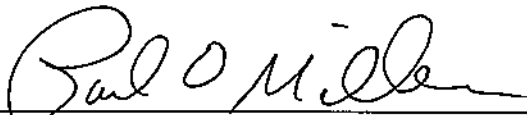
INSTRUCTION NO. 32

I am giving you one verdict form and 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 interrogatories must be signed by your foreperson.

After deliberating for six hours from 12:55 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 Court Attendant.

April 5, 2023


The Honorable Paul D. Miller – District
Court Judge

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