

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

GREEN LTD., LC, Plaintiff/Counterclaim Defendant, v. PORT OF DES MOINES, LLC and MICHAEL LEVALLE, Defendants/Counterclaim Plaintiffs.	Case No. LACL154866 <div style="writing-mode: vertical-rl; transform: rotate(180deg);"> FILED POLK COUNTY, IOWA 2025 APR -3 AM 8:32 CLERK DISTRICT COURT </div>
PORT OF DES MOINES, LLC and MICHAEL LAVALLE, Counterclaim Plaintiffs, v. GREEN LTD. LC, RICHARD EYCHANER, and EYCHANER PROPERTIES, LLC, Counterclaim Defendants.	JURY INSTRUCTIONS

STATEMENT OF THE CASE

Green Ltd. LC (Green) filed this lawsuit against Port of Des Moines LLC (Port of Des Moines) and Michael LaValle. Green claims that Port of Des Moines breached two lease agreements (the 2016 Lease Agreement and the 2019 Lease Agreement) by failing to pay rent. Green claims that LaValle is liable for part of the rent as a partial guarantor. Port of Des Moines claims that it is not liable for unpaid rent because it was excused by the lease agreements' Force Majeure clauses.

Port of Des Moines and LaValle have made claims against Green, Richard Eychaner, and Eychaner Properties, LLC (Eychaner Properties). The claims include breach of contract, fraudulent inducement, and fraudulent misrepresentation. As part of their breach of contract claim, Port of Des Moines and LaValle claim that Green violated the implied covenant of good faith and fair dealing. Port of Des Moines and LaValle's claims are based on their allegation that Green, Eychaner, and Eychaner Properties did not correctly calculate the common area maintenance, insurance, and taxes (CAMIT) rent, that they misrepresented the CAMIT, and induced them into entering into the 2019 Lease Agreement by misrepresenting CAMIT. Green, Eychaner, and Eychaner Properties deny these claims.

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. 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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

INSTRUCTION NO. 2

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. 3

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. 4

You have heard evidence claiming 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. 5

The fact that the parties to this litigation are companies should not affect your decision. All person 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. 6

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. 7

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. 8

Unless instructed otherwise, 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. 9

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

GREEN'S CAUSE OF ACTION**INSTRUCTION NO. 10**

For Green to succeed on its breach of contract claim under the 2016 and 2019 Lease Agreements, it must prove all of the following propositions:

1. The terms of the Lease Agreements;
2. Green has done what the Lease Agreements require;
3. Port of Des Moines breached the Lease Agreements by failing to pay rent;
4. The amount of damages Port of Des Moines caused.

If Green has failed to prove any of these propositions, Green is not entitled to damages. If Green has proved all of these propositions, then you will consider the defense whether the Force Majeure clauses excused payment of rent as explained in Instruction No. 13.

INSTRUCTION NO. 11

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. 12

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

INSTRUCTION NO. 13

Port of Des Moines claims its performance was excused due to the Force Majeure provision under Article XXII(L) of the 2016 and 2019 Leases. If Port of Des Moines has proven that it was delayed, hindered in or prevented from paying rent because of the COVID-19 pandemic, then the payment of rent may be excused. If Port of Des Moines has failed to prove that it was delayed, hindered in or prevented from paying rent because of the COVID-19 pandemic, then you shall decide whether Green is entitled to recover damages.

INSTRUCTION NO. 14

The measure of damages for Green's breach of contract is an amount that would place it in as good a position as it would have enjoyed if the contract had been performed by Port of Des Moines.

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: a) the base rent and CAMIT that Port of Des Moines did not pay on the leases in 2020 and 2021, b) interest of 1.5 percent per month, and c) penalty of 5 percent of the base rent due as defined in the leases.

PORT OF DES MOINES' CLAIMS**INSTRUCTION NO. 15**

For Port of Des Moines to succeed on its breach of contract claim under the 2016 Lease Agreement, it must prove all of the following propositions:

1. The terms of 2016 Lease Agreement;
2. Port of Des Moines has done what the 2016 Lease Agreement requires;
3. Green has breached the 2016 Lease Agreement;
4. The amount of damage Green caused.

If Port of Des Moines has failed to prove any of these propositions, it is not entitled to damages. If Port of Des Moines has proved all of these propositions, then it is entitled to damages of some amount.

INSTRUCTION NO. 16

Every contract contains an implied covenant of good faith and fair dealing. "Good faith" refers to honesty in fact in the conduct performed pursuant to the contract. The duty of good faith is meant to give the parties what they would have stipulated for at the time of contracting if they could have foreseen all future problems of performance.

Port of Des Moines claims that Green breached its duty of good faith and fair dealing by: a) not correctly calculating the square footage of the development, and b) including expenses in CAMIT not included in the development covered by the leases. If Port of Des Moines has proven that Green breached its duty of good faith and fair dealing, it has shown a breach of contract as to element 3 in Instruction No. 15.

INSTRUCTION NO. 17

The measure of damages for Port of Des Moines' breach of contract is an amount that would place it 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: the additional CAMIT that Port of Des Moines paid to Green Ltd. above the amount required under the 2016 Lease.

INSTRUCTION NO. 18

For Port of Des Moines to prevail on its claim that it was fraudulently induced to agree to the terms of the 2019 Lease, it must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. During the 2019 lease negotiations for River Center North, Green, Eychaner, and/or Eychaner Properties made one or more of the following representations to Port of Des Moines through its owner or agent:
 - a) Green, Eychaner, and/or Eychaner Properties had calculated the actual CAMIT for River Center South; and/or
 - b) The negotiated amount of \$10.53 for the fixed CAMIT for the 2019 Lease for River Center North was based on the actual CAMIT for the River Center South.
2. One or more of the representations was false.
3. One or more of the representations was material.
4. Green, Eychaner, and/or Eychaner Properties knew one or more of the representations was false.
5. Green, Eychaner, and/or Eychaner Properties intended to deceive Port of Des Moines.
6. Port of Des Moines acted in reliance on the truth of the representation and was justified in relying on the representation.
7. The representation was a cause of Port of Des Moines' damage.
8. The amount of damage.

If Port of Des Moines has failed to prove any of these propositions, then it cannot recover damages on this claim. If Port of Des Moines has proved all of these propositions, it is entitled to recover damages in some amount.

INSTRUCTION NO. 19

The measure of damages for Port of Des Moines' fraudulent inducement claim is an amount that would place it in as good a position as it would have enjoyed if it had not been fraudulently induced to enter into the 2019 Lease.

The damages you award on this claim 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: the additional CAMIT that Port of Des Moines paid to Green Ltd. under the 2019 Lease if it had not been fraudulently induced to enter into the lease.

INSTRUCTION NO. 20

For Port of Des Moines to prevail on its claim of fraudulent misrepresentation against Green, Eychaner, and/or Eychaner Properties it must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. Green, Eychaner, and/or Eychaner Properties made a representation to Port of Des Moines that it was charged CAMIT expenses only for maintenance costs associated with the common areas of 300 and 320 MLK.
2. The representation was false.
3. The representation was material.
4. Green, Eychaner, and/or Eychaner Properties knew the representation was false.
5. Green, Eychaner, and/or Eychaner Properties intended to deceive Port of Des Moines.
6. Port of Des Moines acted in reliance on the truth of the representation and was justified in relying on the representation.
7. The representation was a cause of Port of Des Moines' damage.
8. The amount of damage.

If Port of Des Moines has failed to prove any of these propositions by clear and convincing evidence, it cannot recover damages. If Port of Des Moines has proved all of these propositions, it is entitled to recover damages in some amount.

INSTRUCTION NO. 21

Concerning proposition no. 1 of Instruction No. 20 “a representation” is any word or conduct asserting the existence of a fact. A representation of fact includes an opinion expressed for the deliberate purpose of deceiving another.

A representation also includes an opinion. An opinion is a statement of a person’s belief that a fact exists or their judgment as to quality, value, authenticity or similar matter. A representation of fact implies that the maker has definite knowledge or information supporting their statement; a representation of opinion does not. You must consider all of the surrounding circumstances, including the exact words used, in deciding whether a representation is one of fact or opinion.

INSTRUCTION NO. 22

Concerning proposition no. 3 of Instruction 20, a representation is “material” if:

1. A reasonable person would consider it as important in making a decision.
2. Green, Eychaner, and/or Eychaner Properties knew or had reason to know that Port of Des Moines considered, or was 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. 23

Concerning proposition no. 4 of Instruction No. 20, Green, Eychaner, and/or Eychaner Properties knew the representation was false if any of the following situations existed:

1. Green, Eychaner, and/or Eychaner Properties actually knew or believed the representation was false.
2. Green, Eychaner, and/or Eychaner Properties made the representation without belief in its truth or in reckless disregard of whether it was true or false.
3. Green, Eychaner, and/or Eychaner Properties falsely stated or implied that the representation was based on its personal knowledge or investigation.
4. Green, Eychaner, and/or Eychaner Properties made a representation which it knew or believed was materially misleading because it left out unfavorable information.
5. Green, Eychaner, and/or Eychaner Properties stated its intention to do or not to do something when it did not actually have that intention.

INSTRUCTION NO. 24

Concerning proposition no. 5 of Instruction No. 20, Green, Eychaner, and/or Eychaner Properties intended to deceive Port of Des Moines if any of the following situations existed when it made a representation:

1. Green, Eychaner, and/or Eychaner Properties wanted to deceive Port of Des Moines or believed that it would in all likelihood be deceived.
2. Green, Eychaner, and/or Eychaner Properties had information from which a reasonable person would conclude that Port of Des Moines would be deceived.
3. Green, Eychaner, and/or Eychaner Properties made the representation without concern for the truth.

INSTRUCTION NO. 25

Concerning proposition No. 6 of Instruction No. 20, Port of Des Moines must have relied on the representation and the reliance must be justified.

It is not necessary that the representation be the only reason for Port of Des Moines' actions. It is enough if the representation was a substantial factor in bringing about the action(s).

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

INSTRUCTION NO. 26

The measure of damages for Port of Des Moines' fraudulent misrepresentation claim is an amount that would place it in as good a position as it would have enjoyed if no fraudulent misrepresentations had been made.

The damages you award on this claim must be foreseeable or have been reasonably foreseen at the time the parties entered into the leases. In your consideration of the damages, you may consider the following: the additional CAMIT that Port of Des Moines paid to Green Ltd. under both leases if no fraudulent misrepresentation had been made.

INSTRUCTION NO. 27

Punitive damages may be awarded if Port of Des Moines has proven by a preponderance of clear, convincing and satisfactory evidence that Green, Eychaner, and/or Eychaner Properties' conduct constituted a willful and wanton disregard for the rights of another and caused actual damage to Port of Des Moines.

Punitive damages are not intended to compensate for the breach of contract claim. It may be allowed if Port of Des Moines has prevailed on one of its fraud claims. In that instance, it is intended to punish and discourage Green, Eychaner, and/or Eychaner Properties and others from like conduct in the future. You may award punitive damages only if Green, Eychaner, and/or Eychaner's conduct warrants a penalty in addition to the amount you award to compensate Port of Des Moines for any damages you award on one of the fraud claims.

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 Green, Eychaner, and/or Eychaner Properties' conduct that harmed Port of Des Moines.
2. The amount of punitive damages which will punish and discourage like conduct by Green, Eychaner, and/or Eychaner Properties. You may consider Green, Eychaner, and/or Eychaner Properties' financial condition or ability to pay. You may not, however, award punitive damages solely because of Green, Eychaner, and/or Eychaner Properties' wealth or ability to pay.
3. Port of Des Moines's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to Port of Des Moines.

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 right that is so great as to make it highly probable that harm will follow.

JURY INSTRUCTION NO. 29

If you find that a party is entitled to recover 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 the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

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. 30

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. 31

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. 32

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. 33

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, however, any of you feel it 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 judicial specialist who has been working with me on this case is in the same position as I am. She will be taking 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 the judicial specialist.

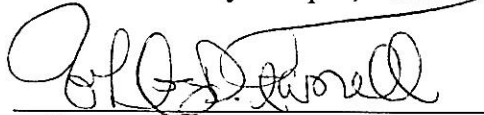
INSTRUCTION NO. 34

I am giving you a 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 must be signed by your foreperson.

After deliberating for six hours from 12:05 o'clock P.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answer 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.

Dated this 2nd day of April, 2025.

A handwritten signature in black ink, appearing to read "Jeffrey D. Farrell", written over a horizontal line.

Jeffrey D. Farrell
Judge, Fifth Judicial District of Iowa