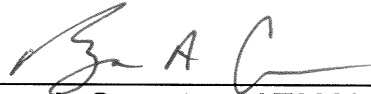


IN THE IOWA DISTRICT COURT FOR ADAMS COUNTY

| | | |
|-----------------------------------|---|---------------------------|
| Upon the Petition of | * | Case No.: LACV016368 |
| ROBERT BEATTY, | * | |
| Plaintiff-Counterclaim Defendant, | * | |
| And concerning | * | |
| COLLEEN BEATTY, | * | SUBMISSION OF PROPOSED |
| Defendant-Counterclaim Plaintiff. | * | STATEMENT OF THE CASE AND |
| | | JURY INSTRUCTIONS |

COMES NOW, the Plaintiff-Counterclaim Defendant, Robert Beatty (Robert), by and through his undersigned counsel, and hereby submits his proposed Jury Instructions.

Respectfully Submitted,



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STATEMENT OF THE CASE

Members of the Jury:

Robert and Colleen Beatty were formerly married, and now divorced. Prior to the parties being granted a Decree of Dissolution of Marriage, Colleen made allegations that Robert had committed an act of domestic violence towards her. Initially, this resulted in Robert being arrested and charged with the crime of domestic abuse assault. A No Contact Order was issued prohibiting him from residing at the parties' martial home, having access to the home or any of the contents thereof. Robert entered a plea of not guilty to the allegations that he had committed domestic violence. He was found not guilty by a jury of his peers. As a result of the not guilty verdict, the No Contact Order that had been entered as part of the criminal prosecution was dropped; however, prior to being able to go back to the home, Colleen obtained an ex parte civil No Contact Order pursuant to Iowa Code Chapter 236 which continued to prohibit Robert from going to the home or having the opportunity to inspect its condition.

The parties eventually entered into a binding Stipulation which was adopted by the Court. The stipulation awarded Robert the real estate and numerous items of personal property that Colleen had previously possessed by virtue of the No Contact Orders, first in the criminal action and then in the civil action. The Stipulation provided that the parties had acquired certain farm equipment and other assets in the farming operation and all machinery, implements, motor vehicles and other similar type assets were awarded to Robert with the exception of certain specifically noted items which were awarded to Colleen. Robert had no opportunity to review the property prior to the execution of the Stipulation.

After the Order was entered, Colleen held over on the property for a period of time, eventually vacating the property on or about December 1, 2017. Upon returning to the property, Robert discovered that numerous items of property that he had been awarded in the Stipulation had been either taken by Colleen or damaged by her.

Plaintiff, Robert Beatty, claims that the Defendant, Colleen Beatty, by making unfounded accusations of domestic abuse by Robert, forced him to be removed from the home's premises and deprived him of possession of property that belonged to him thereby becoming a constructive bailee. Colleen failed to keep property ultimately awarded to Robert in good and proper condition. Additionally, Robert Beatty alleges that Colleen Beatty has committed the tort of conversion by taking certain items of property which had been awarded to Robert.

Defendant, Colleen Beatty, denies the Plaintiff's claims and raises defenses and counterclaims of her own. She claims Robert caused damage to the property prior to her taking possession of said property. Colleen further alleged that Robert failed to keep the property awarded to Colleen in good and proper condition and as a result of his failure to maintain the property in good proper condition, Colleen has been damaged. Finally, Colleen alleged that Robert has wrongfully taken certain items of property, acting with malicious and willful intent, and she has been damaged as a result therefrom.

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.

Stock #100.2

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.

Stock #100.3

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 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 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 and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.

4. Anything you saw or heard about this case outside the courtroom.

Stock #100.4

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.

Stock # 100.5

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.

Stock #100.9

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.

Stock #100.6

INSTRUCTION NO. 7

I will be using the term "fault". Fault means one or more acts or omissions towards the person or the property of the actor or of another which constitutes negligence.

Stock #400.1

INSTRUCTION NO. 8

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

Stock #700.2

INSTRUCTION NO. 9

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. "Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

There can be more than one proximate cause for an injury or damage.

INSTRUCTION NO. 10

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

Stock #700.3

INSTRUCTION NO. 11

Fair Market Value is the value which a willing buyer and willing seller, both well informed as to the facts, but neither under any compulsion to act, would establish in an arm's length sale of the asset in question.

INSTRUCTION NO. 12

If you find the Plaintiff is entitled to damages, you may award damages for the fair market value of the property converted by the Defendant and for the reasonable and necessary expenses incurred in recovering the property.

INSTRUCTION NO. 13

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the Plaintiff and the Defendant and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each party's fault contributed to the damages.

Stock #400.2

INSTRUCTION NO. 14

After you have compared the conduct of the parties, if you find the Plaintiff was at fault and the Plaintiff's fault was more than 50% of the total fault, the Plaintiff cannot recover under its claim that Defendant was at fault.

However, if you find the Plaintiff's fault was 50% or less of the total fault and if you find against the Defendant, then I will reduce the total damages by the percentage of Plaintiff's fault.

Stock # 400.3

INSTRUCTION NO. 15

In order for the plaintiffs to be successful on their claim of breach of duty created by a bailment, plaintiffs must prove the following to a preponderance of the evidence:

1. By preventing Robert from having access to his property Colleen became a constructive Bailee of his property.
2. As a constructive Bailee Colleen had a duty to exercise ordinary care in protecting Robert's property while he was disallowed from accessing the property.
3. Colleen failed to exercise ordinary care in protecting Robert's property while he was disallowed from accessing the property.
4. Robert's personal property was returned in a damaged condition.
5. Robert's personal property was damaged or missing because of Colleen's failure to exercise ordinary care.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proved all of these propositions, the plaintiffs are entitled to damages in some amount.

Not Stock

INSTRUCTION NO. 16

When one ***obtains*** gives possession and the right to use personal property ***belonging*** to another who agrees to return the same property at a future time, the transaction is known in law as a bailment. The person who gives possession is known as a bailor. The person who takes possession is known as a bailee.

Stock # 2300.1 with noted modifications

INSTRUCTION NO. 17

When property is delivered to a bailee in good condition and returned in a damaged condition, a presumption arises that the damage is due to the negligence of the bailee. The presumption can be overcome if the damage is shown to have occurred in spite of due care on the part of the bailee.

If the presumption is not overcome by the evidence, you may use the presumption in determining whether the defendant was negligent.

But, if you find such presumption is overcome by evidence that the damage occurred in spite of due care on the part of the bailee, then you will give no weight to the presumption, and the plaintiff must show by the greater weight of the evidence that the defendant was negligent.

Stock #2300.8

INSTRUCTION NO. 18

In determining whether a bailee has failed to use ordinary care with the property involved, you shall consider the acts of persons under the bailee's control and direction to be acts of the bailee.

Not Stock

INSTRUCTION NO. 19

If you find plaintiff is entitled to recover damages under any of its claims, you shall consider the following items:

1. The reasonable cost of recovery and repair of the property.
2. The reasonable value of the use of the property for the time reasonably required to complete its repair.

The amounts you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 20

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

Model Instruction No. 27

INSTRUCTION NO. 21

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

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

Stock #210.1 – with additional language not included

INSTRUCTION NO. 22

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.

Stock #210.4

INSTRUCTION NO. 23

Question No. 1: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the defendant constituted willful and wanton disregard for the rights or safety of another?

Answer "Yes" or "No" ANSWER: [If your answer to Question No. 1 is "No" do not answer Question Nos. 2 and 3]

Question No. 2: What amount of punitive damages, if any, do you award? ANSWER: [If your answer to Question No. 2 is "None" do not answer Question No. 3]

Question No. 3: Was the conduct of the defendant directed specifically at (name)? Answer "Yes" or "No" ANSWER:

Stock #210.2

INSTRUCTION NO. 24

The defendant claims the sole proximate cause of the plaintiff's damages was the conduct of another party. Sole proximate cause means the only proximate cause. The defendant must prove both of the following propositions:

1. The conduct of another person occurred.
2. The conduct of another person was the only proximate cause of plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has failed to prove the defense of sole proximate cause. If the defendant has proved both of these propositions, the defendant has proved the defense of sole proximate cause and you must find the fault of the defendant, if any, was not a proximate cause of plaintiff's damages when you answer the special verdicts.

Stock #700.5

INSTRUCTION NO. 25

The defendant claims the conduct of other persons or entities, including Plaintiff, for whose acts or omissions Defendant is in no way liable, or other natural conditions was the proximate cause of plaintiff's damages.

In order to establish this defense the defendant must prove all of the following propositions:

1. The conduct of other persons or entities, including Plaintiff, for whose acts or omissions Defendant is in no way liable, or other natural conditions caused plaintiff's damages and occurred after the conduct of the defendant which you have found to constitute negligence.
2. The conduct of the defendant did not create or substantially increase the risk that the plaintiff would sustain damage through the conduct of other persons or entities, including Plaintiff, for whose acts or omissions Defendant is in no way liable, or other natural conditions.
3. The conduct of other persons or entities, including Plaintiff, for whose acts or omissions Defendant is in no way liable, or other natural conditions was not reasonably foreseeable to someone in defendant's position.

If the defendant has proven all of these propositions, then the plaintiff cannot recover damages.

Stock #700.6

INSTRUCTION NO. 26

Conversion is the act of wrongful control or dominion over the plaintiffs' personal property in denial of, or inconsistent with, the plaintiffs' possessory right to the property. The interference must be so serious that the defendants may justly be required to pay the plaintiffs the fair market value of the property. Among the factors to be considered in determining the seriousness of the interference are:

- (a) The extent and duration of the defendants' exercise of dominion or control;
- (b) The defendants' intent to assert a right in fact inconsistent with the plaintiffs' right of control;
- (c) The defendants' good faith;
- (d) The extent and duration of the resulting interference with the plaintiffs' right of control;
- (e) The harm done to the property; and
- (f) The inconvenience and expense caused to the plaintiffs.

Not Stock

INSTRUCTION NO. 27

To succeed on their claim for **conversion**, the plaintiffs must prove all of the following by a preponderance of the evidence:

1. Plaintiffs owned the property, or had some other possessory right to the property greater than that of the defendants;

2. Defendants exercised dominion or control over the property inconsistent with, and in derogation of, plaintiffs' rights; and

3. Plaintiffs have been damaged by the defendants.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proved all of these propositions, the plaintiffs are entitled to damages in some amount.

Not Stock

INSTRUCTION NO. 28

An act which is merely negligent with respect to an item of property will not constitute a **conversion**, even though the act may result in the loss or destruction of the property.

Not Stock

INSTRUCTION NO. 29

No **conversion** may be found where the exercise of control was not wrongful, as for example, where the property was rightfully in the possession of the defendants or where the plaintiffs abandoned the property.

Not Stock

INSTRUCTION NO. 30

Plaintiffs' own negligence is not to be considered a defense to a claim of **conversion**.

Not Stock

INSTRUCTION NO. 31

Sentimental and emotional value may not be considered in awarding damages.

Not Stock

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.

Stock 100.21

INSTRUCTION NO. 33

Upon retiring you shall select a foreman or forewoman. 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.

Model Instruction No. 28

INSTRUCTION NO. 34

I am giving you a verdict form and 7 special interrogatories. 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 foreman or forewoman.

After deliberating for six hours from _____, 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 interrogatories must be signed by all seven jurors who agree.

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