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CLERK OF DISTRICT COURT

BLACK HAWK
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ORIGINAL

BLACK HAWK CO. CLERK OF COURT

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

CREEK ENTERPRISE, INC.,	)	
Plaintiff-Counterclaim Defendant,	)	
vs.	)	CASE NO. LACV152534
	)	
WELSH INVESTMENTS, LLC,	)	JURY INSTRUCTIONS
Defendant-Counterclaim Plaintiff.	)	
	)	
	)	

Members of the Jury:

In this case, Creek Enterprise, Inc. (which is now referred to as “Creek”) claims that Welsh Investments, LLC (which is now referred to as “Welsh”) has damaged Creek because of Welsh’s actions in September 2024 and in December 2024 through January 2025. Creek has brought claims of breach of contract, intentional interference with contract, conversion, trespass, and ongoing criminal conduct against Welsh. Welsh denies the claims.

Welsh has brought a counterclaim against Creek, claiming breach of contract. Creek denies this claim.

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

100.2

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. 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 and do justice.

Instruction No. 2

100.3

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. 3

100.4

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. 4

100.9

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. 5

100.20

The fact that Creek or Welsh is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

Instruction No. 6

2400.1

For Creek's breach of contract claim against Welsh, Creek must prove all of the following propositions:

1. The terms of the contract.
2. Creek has done what the contract requires or has been excused from doing what the contract requires.
3. Welsh has breached the contract.
4. The amount of any damage Welsh has caused.

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

Instruction No. 7

2400.1

For Welsh's breach of contract claim against Creek, Welsh must prove all of the following propositions:

1. The terms of the contract.
2. Welsh has done what the contract requires or has been excused from doing what the contract requires.
3. Creek has breached the contract.
4. The amount of any damage Creek has caused.

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

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

Instruction No. 8

2400.5

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. 9

All contracts, including leases, contain the implied covenant of good faith and fair dealing. An implied covenant of good faith and fair dealing is breached when a party to a contract acts in a manner that is offensive to community standards of decency, fairness, and reasonableness.

Instruction No. 10

The covenant of quiet enjoyment is contained in all leases. The covenant of quiet enjoyment is a covenant and warranty by the lessor that the tenant shall have quiet and peaceful possession of the demised premises as against the lessor, any person claiming title through or under the lessor, or any person with a title superior to the lessor. When a tenant is actually evicted from the leased premises, a breach of the covenant of quiet enjoyment has occurred. Quiet enjoyment protects a tenant's right to freedom from serious interferences with the tenancy that impair the character and value of the leased premises.

Instruction No. 11

2400.6

A breach of the contract occurs when a party fails to perform a term of the contract or interferes with any covenants, including the implied covenant of good faith and fair dealing or the covenant of quiet enjoyment.

Instruction No. 12

Once one party to a contract breaches the agreement, the other party is no longer obligated to continue performing its own contractual obligations.

Performance is excused where one party clearly rejects the contract by giving notice to the other that they will not perform.

Instruction No. 13

2400.8

Welsh claims performance was excused because of renunciation.

If Welsh has proved renunciation, then you shall find for Welsh.

If Welsh has failed to prove renunciation, then you shall decide whether Creek is entitled to recover damages.

Instruction No. 14

220.1

The measure of damages for Welsh's breach of a contract is an amount that would place Creek 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 amount of money lost by Creek because of Welsh's conduct in preventing Creek from accessing the leased property.

Instruction No. 15

220.1

The measure of damages for Creek's breach of a contract is an amount that would place Welsh 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:

— Any unpaid lease obligations, unless you find those obligations were terminated.

Instruction No. 16

1200.1

To prevail on its claim for Intentional Interference with a Contract, Creek must prove all of the following propositions:

1. Creek had a contract with third-parties.
2. Welsh knew of the contract.
3. Welsh intentionally and improperly interfered with the contract by locking Creek out of the premises and preventing Creek from accessing its equipment and inventory.
4. The interference caused Creek not to perform the contract.
5. The nature and amount of damage.

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

Instruction No. 17

1200.3

A contract is an agreement between two or more persons to do or not to do something.

Instruction No. 18

1200.4

Welsh “knew” of the contract if Welsh either had actual knowledge of the contract or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the contract between Creek and the third-parties.

Instruction No. 19

1200.5

In determining whether Welsh's conduct in intentionally interfering with a contract was improper you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was improper you may consider:

1. The nature of the conduct.
2. Welsh's motive.
3. The interests of Creek.
4. The interest sought to be advanced by Welsh.
5. The social interests in protecting the freedom of action of Welsh and the contractual interests of Creek.
6. The nearness or remoteness of Welsh's conduct to the interference.
7. The relations between the parties.

Instruction No. 20

1200.6

Welsh's interference with a contract was intentional if the Welsh either interfered with the contract on purpose or knew the conduct was substantially certain to interfere with the contract.

Instruction No. 21

210.1

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

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage Welsh and others from like conduct in the future. You may award punitive damages only if Welsh's conduct warrants a penalty in addition to the amount you award to compensate for Creek'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 Welsh's conduct that harmed Creek.
2. The amount of punitive damages which will punish and discourage like conduct by Welsh. You may consider Welsh's financial condition or ability to pay. You may not, however, award punitive damages solely because of Welsh's wealth or ability to pay.
3. Creek's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to Creek.
4. The existence and frequency of prior similar conduct. Although you may consider harm to others in determining the nature of Welsh's conduct, you may not award punitive damages to punish Welsh for harm caused to others, or for out-of-state conduct that was lawful where it occurred, or for any conduct by Welsh that is not similar to the conduct which caused the harm to Creek in this case.

Instruction No. 22

100.19

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

Instruction No. 23

Conversion is the wrongful control or dominion over another's property contrary to that person's possessory right to the property.

Instruction No. 24

For Creek to prevail on its claim of conversion, it must prove each of the following elements:

1. Creek's right of possession over the equipment and inventory is greater than Welsh's claimed right of possession over the equipment and inventory.
2. Welsh's exercise of dominion or control over the equipment and inventory was inconsistent with, and in derogation of, Creek's possessory rights thereto.
3. Creek was damaged by Welsh's conduct.

Instruction No. 25

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

- The reasonable value of the loss of use of the equipment and inventory during the time when Creek lost access.
- The fair and reasonable market value of the equipment and inventory at the time when Creek lost access.

Instruction No. 26

“Trespass to land” is an interference with another’s present right of possession. In fact, the essence of a trespass to real property is the injury to, violation of, or interference with the right of possession. A trespass is committed where a plaintiff has the right of possession to the land at issue, and there is a wrongful and unlawful entry upon such possession by Welsh.

Every unauthorized, and therefore unlawful, entry into the private property of another is a trespass, which necessarily carries with it some damage for which the trespasser is liable.

Instruction No. 27

For Creek to prevail on its claim of trespass, it must prove each of the following elements:

1. Creek was in possession of the leased property when Welsh entered the premises on September 9, 2024.
2. Welsh's entry into the premises on September 9, 2024 was unauthorized.
3. Creek was damaged by Welsh's the trespass.

Instruction No. 28

You may consider the following elements of damage allegedly caused by Welsh's trespass:

1. The reasonable value of Creek's loss of the use or enjoyment of its property; and
2. The amount of lost income suffered by Creek as a result of the trespass.

Instruction No. 29

For Creek to prevail on its claim for ongoing criminal conduct, Creek must prove all of the following elements:

1. Welsh committed an act of theft.
2. The act was committed for financial gain.
3. The act was committed on a continuing basis.
4. The act directly or indirectly damaged Creek's business or property.
5. The amount of damage.

If Creek has proved all of these elements, then it is entitled to recover damages in some amount.

Instruction No. 30

A person commits theft when the person takes possession or control of the property of another, or property in possession of another, with the intent to deprive the other thereof.

Instruction No. 31

An act occurs on a “continuing basis” when there is a course of wrongful activity as opposed to an isolated or one-time act. The activity in question must be related for there to be a continuing basis.

Instruction No. 32

400.7

Creek claims Welsh was at fault for failing to mitigate its damages by not finding a replacement tenant within a commercially reasonable time.

Welsh has a duty to act in a commercially reasonable manner to find a replacement tenant in order to reduce, minimize or limit its damages. However, Welsh has no duty to do something that is unreasonable under the circumstances.

To prove Creek's claim of failure to mitigate, it must prove all of the following:

1. There was something Welsh could do to mitigate its damages;
2. Requiring Welsh to do so was reasonable under the circumstances;
3. Welsh acted unreasonable in failing to undertake the mitigating activity; and
4. Welsh's failure to undertake the mitigating activity caused an identifiable portion of its damages.

If Creek has proved all of these numbered propositions, then Creek has proved this defense, and you shall deduct an amount from Welsh's damages because of the failure to mitigate. This amount will be used in answering the verdict forms. If Creek has failed to prove one or more of these numbered propositions, then Creek has not proved Welsh failed to mitigate its damages.

Instruction No. 33

100.23

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

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 or application-based maps or programs, or any other application, program, or device to search for or 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. 34

Occasionally, jurors want to ask a question after they begin deliberating. I have prepared the instructions after carefully considering the case with the attorneys. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by re-reading them. If a question should occur, please consider the following:

- a. Words not defined in these instructions should be given their ordinary meaning.
- b. There will be no additional evidence and no additional instructions of law. These instructions contain all the law you need to decide this case.
- c. I will meet with you after you reach a verdict, if I can. At that time, I will be happy to answer your questions about the trial process.
- d. If you ask me a question during your deliberations, your presiding officer 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. This naturally takes time and deliberation before I can reply. After that, I will send you a written answer consistent with subparagraphs a and b above.

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

Instruction No. 35

100.21

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. 36

100.18

When you begin your deliberations, you should select a foreperson. The foreperson shall see that your deliberations are carried on in an orderly manner, that the issues are fully and freely discussed, and that every 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. 37

I am giving you 1 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 answers to questions must be signed by your foreman or forewoman. After deliberating for six hours from 10:32 o'clock A.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.

Dated: May 6, 2026.


David P. Odekirk
Judge of the Iowa District Court