

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

STONEKING ENTERPRISES, INC.,

Plaintiff,

v.

AMY PODZIMEK,

Defendant.

CASE NO. LACV104987

JURY INSTRUCTIONS

FILED
2005 JAN -6 PM 8:10
LINN COUNTY, IOWA

Instruction No. 1

Members of the Jury: In this case, Plaintiff Stoneking Enterprises, Inc. claims that it and Defendant Amy Podzimek entered into an enforceable agreement and that Defendant breached the agreement by failing to make payments due under the agreement.

The Defendant admits the parties entered into an enforceable agreement but claims that she is not obligated to pay Stoneking and has not breached the agreement.

The issues in this case revolve around whether Plaintiff Stoneking Enterprises, Inc. is entitled to payment from Defendant Amy Podzimek and/or whether Defendant Amy Podzimek is excused from paying Stoneking.

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. 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. 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. 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

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

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. 6

The fact that a plaintiff or defendant 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. 7

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. 8

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.

Instruction No. 9

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.

Instruction No. 10

Plaintiff must prove all of the following propositions:

1. The existence of a contract.
2. The terms of the contract.
3. The plaintiff has done what the contract requires or has been excused from

doing what the contract requires as explained in Instruction No. 15.

4. The defendant has breached the contract.
5. The amount of any damage defendant has caused.

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

Instruction No. 11

The existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances.

Every contract contains an implied covenant of good faith and fair dealing. This means that each party to a contract has a duty to act in good faith and deal fairly with the other party in the performance and enforcement of the contract.

Instruction No. 12

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. 13

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

Instruction No. 14

When a person agrees to do something for a specified consideration to be received after full performance, they are not entitled to any part of the consideration until they have performed as agreed. However, one party to a contract may not prevent the other from rendering full performance.

"Consideration" is either a benefit given or to be given to the person who makes the promise or a detriment experienced or to be experienced by the person to whom the promise is made. Where the contract provides for mutual promises, each promise is a consideration for the other promise.

Instruction No. 15

Performance is excused if the other party prevents it or makes it impossible.

Instruction No. 16

It is my duty to instruct you about damages. By instructing you on damages, I do not mean to suggest what your verdict should be on any claim.

If you find in favor of plaintiff on its claim, then you must determine what amount of damages to award on the claim. "Damages" are the amount of money that will fairly and adequately compensate plaintiff under the claim. It is for you to determine what damages plaintiff has proved by a preponderance of the evidence.

Any damages award must be based upon evidence and not upon speculation, guesswork, conjecture, or sympathy. Damages must not be based upon a desire to punish or penalize the defendant or anyone else. You cannot determine the amount for a particular item of damages by taking down each juror's estimate and agreeing in advance that the average of those estimates will be your award for that item of damages.

The specific measure of damages for plaintiff's claim is provided below.

Breach of Contract Claim: The measure of damages for plaintiff's breach of contract claim is an amount that would place plaintiff in as good a position as it would have enjoyed if the contract had been performed. In your consideration of the damages, you may consider the terms of the contract.

Instruction No. 17

I am giving you a verdict form with two 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 form and answers to the questions must be signed by your foreperson.

After deliberating for six hours from 1130 o'clock to .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 form and answers to the questions must be signed by all seven jurors who agree.

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

Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof, or what your verdict should be.

Ken McLean
DISTRICT JUDGE

CASE: 06571 LACV104987 - STONEKING ENTERPRISES INC VS AMY PODZIMEK

EVENT CODE: OTOT - Other Event

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FIRST COMMENT: JURY QUESTIONS AND JUDGE RESPONSE



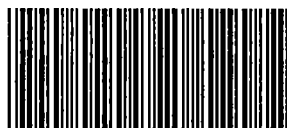
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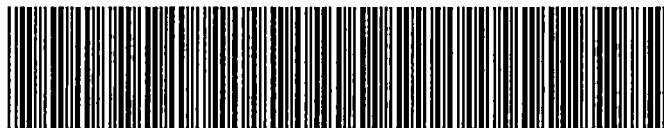
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Question -

Q: If damages were to be awarded, is the amount limited to what the plaintiff has listed like 10,400 + ~~per~~ the permit. Or is that a number we calculate?

A: Is this an amt. where court costs for the plaintiff are considered.

BRIAN JETT
Bel Jett

Please refer back to
the instructions regarding
damages.

- Kevin M. Dem
130 pm Dist storage