

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

AESTHETIC ELEMENTS, INC.,

Plaintiff,

v.

MEERA ENTERPRISE, LLC,

Defendant.

LAW NO. LACV098707

**JURY INSTRUCTIONS AND VERDICT
FORMS**

FILED
CLERK OF DISTRICT COURT
2023 MAY -8 PM 4:15
LINN COUNTY, IOWA

INSTRUCTION NO. 1

Members of the Jury:

This is a civil case brought by Aesthetic Elements, Inc. against Meera Enterprise, LLC. In August 2020, a hotel owned by Meera Enterprise, LLC suffered severe damage by the derecho that came through Cedar Rapids, Iowa. On or about August 13, 2020, Meera Enterprise, LLC entered into a Service Agreement with Aesthetic Elements, Inc., a contractor, regarding certain services related to roofing damage at the hotel.

Aesthetic Elements, Inc. contends that Meera Enterprise, LLC breached the Service Agreement. Aesthetic Elements, Inc. claims it suffered damages as a result of this conduct. Aesthetic Elements, Inc. also contends that Meera Enterprise, LLC was unjustly enriched from breaching the Service Agreement.

Meera Enterprise, LLC denies that it breached the Service Agreement and denies that it was unjustly enriched. In response, Meera Enterprise, LLC also asserts certain affirmative defenses, explained later in these instructions, which rendered the Services Agreement unenforceable or otherwise excused it from performing.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law that 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 (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 received into evidence from a videotaped 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.

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

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. 9

The fact that a plaintiff or defendant is a corporation should not affect your decision. All parties 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. 10

You may not communicate about this case with anyone before reaching your verdict, whether it be family or friends, in person, or over the phone or internet. This includes by 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. You should avoid reading newspapers or watching the local news; there may be news coverage of the case.

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.

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

INSTRUCTION NO. 11

BREACH OF CONTRACT—ESSENTIALS FOR RECOVERY

To establish its claim for breach of contract, Aesthetic Elements, Inc. must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. Aesthetic Elements, Inc. has done what the contract requires.
6. Meera Enterprise, LLC has breached the contract.
7. The amount of any damage defendant has caused.

If Aesthetic Elements, Inc. has failed to prove any of these propositions, Aesthetic Elements, Inc. is not entitled to damages. If Aesthetic Elements, Inc. has proved all of these propositions, then you will consider Meera Enterprise, LLC's defenses of prior material breach, waiver, and renunciation as explained in Instruction Nos. 25, 26, and 27.

INSTRUCTION NO. 12

EXISTENCE OF A CONTRACT

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

An agreement to agree at some point in the future is not a contract. An agreement to agree to enter into a contract is of no effect unless all of the terms and conditions of the contract are agreed on and nothing is left to future negotiations. A writing that clearly contemplates the subsequent signing of a formal agreement suggests that the parties to the writing did not intend to be bound until the subsequent formal agreement is finalized.

INSTRUCTION NO. 13

"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. 14

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. 15

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

INSTRUCTION NO. 16

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 unless full performance has been excused, waived, prevented, delayed by the act of the other party.

However, a plaintiff who has not fully performed under the terms of the contract may still recover some amount if the failure to render performance due at an earlier time was not material. In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

1. The extent to which defendant will be deprived of the benefit which defendant reasonably expected.
2. The extent to which defendant can be adequately compensated for the part of that benefit of which defendant will be deprived.
3. The extent to which plaintiff will suffer forfeiture.
4. The likelihood that plaintiff will cure the failure, taking account of all the circumstances including any reasonable assurances.
5. The extent to which the behavior of the plaintiff is in line with standards of good faith and fair dealing.

INSTRUCTION NO. 17

The measure of damages for breach of a contract is an amount that would place AEI in as good a position as it would have enjoyed if the Service Agreement 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 Service Agreement.

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

1. AEI's lost profits for Meera's breach of the Service Agreement.
2. The Liquidated Damages in the Service Agreement.

INSTRUCTION NO. 18
UNJUST ENRICHMENT

Aesthetic Elements, Inc. alleges that Meera Enterprise, LLC was unjustly enriched. To establish a claim for unjust enrichment, Aesthetic Elements, Inc. must show all the following by a preponderance of the evidence:

1. That Meera Enterprise, LLC was enriched by a benefit provided by Aesthetic Elements, Inc.;
2. Meera Enterprise, LLC's enrichment was at the expense of Aesthetic Elements, Inc.; and
3. It is unjust to allow Meera Enterprise, LLC to retain the benefit provided by Aesthetic Elements, Inc. under the circumstances. It is not unjust to receive a bid or estimate from one party but hire another party.

If Aesthetic Elements, Inc. failed to prove any one or more of these elements, Meera Enterprise, LLC is not liable for damages. If Aesthetic Elements, Inc. proved all these elements, Meera Enterprise, LLC may be liable for damages.

INSTRUCTION NO. 19

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. 20

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.

INSTRUCTION NO. 21

I am giving you two verdict forms 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 must be signed by your foreman or forewoman.

After deliberating for six hours from 1 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 must be signed by all seven jurors who agree.

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

INSTRUCTION NO. 22

CONTRADICTORY STATEMENT, NON-PARTY, WITNESS NOT UNDER OATH

You have heard evidence claiming one or more witness made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

INSTRUCTION NO. 23

CONTRADICTORY STATEMENTS, NON-PARTY, WITNESS UNDER OATH

You have heard evidence claiming one or more witness made statements before this trial while under oath which were inconsistent with what that 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 that 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. 24

STATEMENTS BY A PARTY OPPONENT

You have heard evidence claiming representatives of AEI and Meera made statements before this trial while under oath and statements before this trial 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 that person had made it under oath during the trial.

If you find such a statement was made and was inconsistent with that representative's testimony during the trial you may also use the statement as a basis for disregarding all or any part of his testimony during the trial but you are not required to do so. You should not disregard the representative's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 25

DEFENSE OF PRIOR MATERIAL BREACH

Meera Enterprise, LLC alleges that its performance was excused because Aesthetic Elements, Inc. breached the Service Agreement first. In determining whether Meera Enterprise, LLC has established defense of prior material breach by a preponderance of the evidence, the following circumstances are significant:

1. The extent to which Meera Enterprise, LLC will be deprived of the benefit which defendant reasonably expected.
2. The extent to which Meera Enterprise, LLC can be adequately compensated for the part of that benefit of which Meera Enterprise, LLC will be deprived.
3. The extent to which Aesthetic Elements, Inc. will suffer forfeiture.
4. The likelihood that Aesthetic Elements, Inc. will cure the failure, taking account of all the circumstances including any reasonable assurances.
5. The extent to which the behavior of the Aesthetic Elements, Inc. is in line with standards of good faith and fair dealing.

If Meera Enterprise, LLC established its defense of prior material breach, it is not liable for damages. If Meera Enterprise, LLC did not prove its defense of prior material breach, it may be liable for damages.

INSTRUCTION NO. 26

DEFENSE OF WAIVER OF PERFORMANCE

Meera Enterprise, LLC claims its performance was excused because of waiver of performance. The right to insist on performance can be given up. This is known as a “waiver.” A waiver may be shown by actions, or you may conclude from Aesthetic Elements, Inc.’s conduct and the surrounding circumstances that a waiver was intended. The essential elements of a waiver are the existence of a right, knowledge of that right, and an intention to give it up.

If Meera Enterprise, LLC has proved waiver of performance, then you shall find for Meera Enterprise, LLC. If Meera Enterprise, LLC has failed to prove waiver of performance, then you shall decide whether Aesthetic Elements, Inc. is entitled to recover damages.

INSTRUCTION NO. 27

DEFENSE OF RENUNCIATION

Meera Enterprise, LLC claims its performance was excused because of renunciation. Performance is excused where one party clearly rejects the contract by giving notice to the other that they will not perform.

If Meera Enterprise, LLC has proved renunciation, then you shall find for Meera Enterprise, LLC. If Meera Enterprise, LLC has failed to prove renunciation, then you shall decide whether Aesthetic Elements, Inc. is entitled to recover damages.

INSTRUCTION NO. 28

I am giving you two verdict forms. You will follow these instructions and the questions on the forms to fill out the verdict form.

When you have reached your verdict, please follow the steps in Instruction 21.

Dated this 5th day of May, 2023, at 1:04 p.m.



David M. Cox
District Court Judge,
Sixth Judicial District of Iowa