

IN THE IOWA DISTRICT COURT FOR PALO ALTO COUNTY

KATHLEEN BROWNELL,

Plaintiff,

vs.

SCOTT JOHNSON and THE JOHNSON
FARM ACCOUNT TRUST,

Defendants.

Cause No. LACV025469

COURT'S JURY INSTRUCTIONS

LADIES AND GENTLEMEN OF THE JURY:

The Court herewith submits to you the following Statement of the Case and Instructions pertaining to the law in this case:

STATEMENT OF THE CASE

In this case Kathleen Brownell claims that since July 2015 Scott Johnson and the Johnson Farm Account Trust have intentionally and improperly interfered with a contract between Kathleen Brownell and Phillip Johnson; namely the right for Kathleen Brownell to receive alimony payments from Phillip Johnson pursuant to a Decree of Dissolution of Marriage and Stipulation and Agreement filed on May 29, 2013.

Scott Johnson and the Johnson Farm Account Trust deny any improper interference.

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.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or 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

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

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

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. 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 Trust should not affect your decision. All persons are equal before the law, and trusts, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 7

Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall act in conformity with all of the following:

- a. In accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise in the principal's best interest.
- b. In good faith.
- c. Only within the scope of authority granted in the power of attorney.

Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall do all of the following:

- a. Act loyally for the principal's benefit.
- b. Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.
- c. Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances.
- d. Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.
- e. Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.
- f. Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based upon all relevant factors, including all of the following:

- (1) The value and nature of the principal's property.
- (2) The principal's foreseeable obligations and need for maintenance.
- (3) Minimization of the principal's taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
- (4) The principal's eligibility for a benefit, a program, or assistance under a statute or regulation or contract.

INSTRUCTION NO. 8

The Plaintiff must prove all of the following propositions:

1. The plaintiff had a contract with Phillip Johnson.
2. The defendants knew of the contract.
3. The defendants intentionally and improperly interfered with the contract by not making monthly spousal support payments to the Plaintiff.
4. The interference caused Phillip Johnson not to perform the contract.
5. The nature and amount of damage.

If the plaintiff has failed to prove any one or more 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. 9

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

INSTRUCTION NO. 10

The defendant "knew" of the contract if the defendant 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 Kathleen Brownell and Phillip Johnson.

INSTRUCTION NO. 11

A defendant's interference with a contract is intentional if the defendant either interferes with the contract prospective business on purpose or knows the conduct is substantially certain to interfere with the contract.

INSTRUCTION NO. 12

In determining whether a defendant's conduct in intentionally interfering with a contract is 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. The defendants' motive.
3. The interests of the party with which the conduct interferes.
4. The interest sought to be advanced by the defendants.
5. The social interests in protecting the freedom of action of the defendants and the contractual interests of the other party.
6. The nearness or remoteness of the defendants' conduct to the interference.
7. The relations between the parties.

INSTRUCTION NO. 13

The measure of damages for intentional and improper interference with contract is an amount that would place the party in as good a position as they would have enjoyed if the contract had been performed.

The damages you award for intentional and improper interference with contract must be foreseeable or have been reasonably foreseen at the time the intentional and improper interference occurred.

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

Damages claimed by Kathleen Brownell as a result of interference with the contract with Phillip Johnson, reasonable attorney's fees and court costs.

INSTRUCTION NO. 14

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. 15

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

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 maps or Google Earth or any other program or device to search for or to 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. 16

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. 17

I am giving you one form of verdict. 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 11:40 o'clock 0 .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.

Dated this 31st day of January, 2019.


NANCY L. WHITTENBURG,
Judge, Third Judicial District of Iowa