

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

VILLAGE GREEN LLC; VILLAGE ON GRAND LLC Plaintiffs, V. COLAMAN RE HOLDINGS, LLC; ALTOS REALTY ADVISORS IA, LLC; AREND K. ACCOLA; RALPH ACCOLA, AND GRAND STRATFORD LLC, Defendants.	FILED POLK COUNTY, IA. 2025 FEB -6 PM 1:47 CASE NO. LACL153918 COURT JURY INSTRUCTIONS AND VERDICT FORM
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INSTRUCTION NO. 1**MEMBERS OF THE JURY:**

This is a civil case brought by Plaintiffs Village Green LLC and Village on Grand LLC. These two companies will be referred to in these instructions collectively as Village Green. Village Green alleges that it bought an apartment complex in Des Moines from Defendant Colaman RE Holdings, LLC and that Colaman misrepresented or failed to disclose material facts about the condition of the apartment complex to Village Green, including known water damage and the need for mandatory elevator upgrades. Village Green further alleges that one of Colaman RE Holdings' owners (Arend Accola) and the manager of the property (Altos Realty Advisors IA, LLC), also misrepresented material facts about the condition of the property. Village Green further alleges that a previous owner of the property (Grand Stratford LLC) failed to disclose material facts about the condition of the property to Colaman RE Holdings, LLC.

Village Green seeks monetary damages for these alleged failures. Village Green also claims the conduct of Arend Accola was willful and wanton and that Village Green is entitled to punitive damages.

The Defendants deny all of the allegations made by Plaintiffs, and assert they properly disclosed all information about the property necessary or required to Plaintiffs.

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

In this case, you will only decide Plaintiffs' claims against Altos Realty Advisors IA, LLC, Arend Accola, and Grand Stratford, LLC. I will decide Plaintiffs' claims against Colaman RE Holdings, LLC. Plaintiffs' claims against Colaman RE Holdings are not before you and will not be decided by you.

You have heard evidence against Colaman RE Holdings, LLC during this case, but you will not consider this evidence in making your decision on the claims against Altos Realty Advisors IA, LLC, Arend Accola, and Grand Stratford, LLC. You will not find Arend Accola, Altos Realty Advisors IA, or Grand Stratford, LLC responsible in place of Colaman RE Holdings, LLC.

INSTRUCTION NO. 3

My duty is to tell you what the law is. Your duty is to accept and apply this law to the claims before you.

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 regarding Altos Realty Advisors IA, LLC, Arend Accola, and Grand Stratford, LLC. My duty is to decide all fact questions regarding Colaman RE Holdings, LLC.

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. 4

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. 5

Whenever a party must prove something, that party must do so according to a burden of proof. In this trial, that burden of proof will not always be the same. There are two different burdens of proof that you will use in trial.

One burden of proof is known as 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 on the number of witnesses testifying for one side or the other or the number of exhibits any party has admitted into evidence.

Some matters in this case will be judged by a second, higher burden of proof called clear, convincing and satisfactory evidence. Evidence is clear, convincing, and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from the evidence.

In these instructions, whenever I tell you how to decide if a party has proved something, I will tell you what burden of proof to apply.

INSTRUCTION NO. 6

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 into evidence

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. 7

Certain testimony has been read into evidence from a deposition or played from a video of a deposition. A deposition is testimony taken under oath before the trial and preserved. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 8

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. 9

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 10

You have heard evidence claiming witnesses made statements before this trial while under oath which were inconsistent with what witnesses 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 a 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. 11

You have heard evidence claiming a party made statements before this trial while under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the party had made it under oath during the trial.

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

INSTRUCTION NO. 12

The fact that a Plaintiff or Defendant is a limited liability company should not affect your decision. All persons are equal before the law, and companies, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 13

To recover on their claim for intentional interference with a contract, the Plaintiffs must prove all of the following propositions as to each Defendant:

1. The Plaintiff had a contract with Colaman RE Holdings, LLC.
2. The Defendant Altos Realty Advisors IA, LLC and/or Arend Accola knew of the contract.
3. The Defendant Altos Realty Advisors IA, LLC and/or Arend Accola intentionally and improperly interfered with the contract by withholding or misrepresenting material information about the property.
4. The interference caused:
 - a. Colaman RE Holdings, LLC. not to perform the contract; and/or
 - b. the Plaintiff's performance of the contract to be more burdensome or expensive.
5. The nature and amount of damage.

If the Plaintiff has failed to prove any one or more of these propositions against a Defendant, the Plaintiff is not entitled to damages from that Defendant.

INSTRUCTION NO. 14

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

INSTRUCTION NO. 15

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 Colaman RE Holdings, LLC. and Plaintiffs.

INSTRUCTION NO. 16

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 Defendant's motive.
3. The interests of the party with which the conduct interferes.
4. The interest sought to be advanced by the Defendant.
5. The social interests in protecting the freedom of action of the Defendant and the contractual interests of the other party.
6. The nearness or remoteness of the Defendant's conduct to the interference.
7. The relations between the parties.

The intent to interfere with a contract on its own does not make the interference improper.

INSTRUCTION NO. 17

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

INSTRUCTION NO. 18

A member, director or officer of a limited liability company acts as an agent of the corporation when acting in good faith to protect the interests of the corporation. When acting as an agent within the scope of the qualified privilege, there can be no tortious interference because only two parties exist; the company and the contracting party. However, when an officer or director acts beyond the scope of their qualified privilege, they are no longer acting as agents of the company and can be personally liable for their acts.

INSTRUCTION NO. 19

For its claim of fraudulent misrepresentation against Arend Accola and/or Altos Realty Advisors IA, LLC, Village Green must prove the following propositions by clear, convincing and satisfactory evidence:

1. ~~Altos Realty Advisors IA or~~ Arend Accola, on or around the 2nd day of June, 2021, made a representation to Village Green that induced Village Green to enter the purchase agreement.

2. The representation was false.

3. The representation was material.

4. The Defendant that made the representation knew the representation was false.

5. The Defendant that made the representation intended to deceive Village Green.

6. Village Green acted in reliance on the truth of the representation and was justified in relying on the representation.

7. The representation was a cause of the Villages Green's damage.

8. The amount of damage.

If Village Green has failed to prove any of these propositions, the plaintiff cannot recover damages.

INSTRUCTION NO. 20

For its claim of fraudulent nondisclosure against Grand Stratford, LLC the Plaintiffs must prove all of the following propositions by clear, convincing and satisfactory evidence:

1. As described in Instruction No. 29, special circumstances existed which gave rise to a duty of disclosure between Colaman RE Holdings, LLC and Grand Stratford.

2. While such relationship existed, Grand Stratford was aware of the following facts:

a) the need for mandated elevator upgrades and/or

b) extensive mold or water issues in the property.

3. While such relationship existed, Grand Stratford concealed or failed to disclose the need for mandated elevator upgrades or the extensive mold or water issues in the property.

4. The undisclosed information was material to the transaction.

5. Grand Stratford knowingly failed to make the disclosure.

6. Grand Stratford intended to deceive Colaman RE Holdings by withholding such information.

7. Village Green acted in reliance upon Grand Stratford's failure to disclose and was justified in such reliance.

8. The failure to disclose was a cause of Village Green's damage.

9. The nature and extent of the Village Green's damage.

If Village Green has failed to prove any of these propositions, Village Green cannot recover damages. If Village Green has proved all of these propositions, Village Green is entitled to recover damages in some amount.

INSTRUCTION NO. 21

Concerning propositions 3 of Instructions 13 and 19 and proposition 4 of Instruction No. 20, a representation is "material" if:

1. A reasonable person would consider it as important in making a decision or
2. The defendant that made the statement knew or had reason to know that Village Green considered, or was likely to consider, the representation as important in making a decision, or
3. The representation influences a person to enter into a transaction which would not have occurred otherwise.

INSTRUCTION NO. 22

"A representation" is any word or conduct asserting the existence of a fact.

A representation also includes an opinion. An opinion is a statement of a person's belief that a fact exists or their judgment as to quality, value, authenticity, or similar matter. An honest opinion as distinguished from a positive assertion of fact does not amount to fraud, even if such opinion is false. A representation of fact implies that the maker has definite knowledge or information supporting their statement; a representation of opinion does not.

You must consider all of the surrounding circumstances, including the exact words used, in deciding whether a representation is one of fact or opinion.

INSTRUCTION NO. 23

The Defendant knew the representation was false if any of the following situations existed:

1. The Defendant actually knew or believed the representation was false.
2. The Defendant made the representation without belief in its truth or in reckless disregard of whether it was true or false.
3. The Defendant falsely stated or implied that the representation was based on their personal knowledge or investigation.
4. The Defendant made a representation which they knew or believed was materially misleading because it left out unfavorable information.

INSTRUCTION NO. 24

The Defendant intended to deceive the Plaintiff if any of the following situations existed when they made a representation:

1. The Defendant wanted to deceive the Plaintiff or believed that the Plaintiff would likely be deceived.
2. The Defendant had information from which a reasonable person would conclude that the Plaintiff would be deceived.
3. The Defendant made the representation without concern for the truth.

INSTRUCTION NO. 25

Concerning proposition No. 6 of Instruction No. 19 and No. 7 of Instruction No. 20, Altos Realty Advisors IA, Arend Accola, and Grand Stratford, LLC are liable only to a person or group of persons whom they intended or had reason to expect would act or refrain from acting in reliance on the representation. It is not necessary that the defendant knew the plaintiff's name so long as the defendant intended or had reason to expect that the representation would be received and relied upon by a group of persons including the plaintiff. A person has reason to expect a result if he or she has information from which a reasonable person would conclude that the result will follow.

Altos Realty Advisors IA, Arend Accola, and Grand Stratford, are liable only to those persons who rely on the representation in the type of transaction in which Altos Reality Advisors, IA, Arend Accola and Grand Stratford intends or has reason to expect the conduct of others will be affected.

INSTRUCTION NO. 26

Concerning proposition No. 6 of Instruction No. 19 and No. 7 of Instruction No. 20, Village Green must rely on the representation and the reliance must be justified.

It is not necessary that the representation be the only reason for the Village Green's action. It is enough if the representation was a substantial factor in bringing about the action.

Whether reliance is justified depends on what Village Green can reasonably be expected to do in light of their own information and intelligence. Reliance is not justified if the representation is of an unimportant fact or is obviously false.

INSTRUCTION NO. 27

Corporate officers are individually liable to third parties for their torts, even when occurring while they act in their official corporate capacity. If a member of a limited liability company injures another person while working in the course of the firm's business, the member is personally liable for that harm along with the company.

To be found personally liable for a tort committed by a limited liability company, a member or manager of the company must have in some way participated in the tortious conduct. A member or manager may not be held personally liable solely by reason of his status as a member or manager of the limited liability company. A manager or member of a limited liability company is not liable for tortious conduct merely because they performed a general administrative duty.

Plaintiffs cannot recover from Defendant Arend Accola individually for the actions of Colaman RE Holdings, LLC and Altos Realty Advisors IA, LLC, unless Plaintiffs have shown Arend Accola personally participated in the alleged wrong.

INSTRUCTION NO. 28

The mere fact an investigation has been made, does not preclude a purchaser from recovering for damages sustained as a result of a seller's false representations. You must consider the facts and circumstances of this particular case and determine whether the Plaintiffs are precluded from recovery because of their investigation or opportunity to investigate.

INSTRUCTION NO. 29

A seller is required to reveal to the buyer material facts known to the seller but not the buyer and not readily observable upon reasonable inspection by the buyer concerning the property which is the subject of the sale.

INSTRUCTION NO. 30

An agent or employee's knowledge is imputed to his or her employer.

An agency relationship exists where there is (1) a manifestation of consent by one person that another shall act on the former's behalf and subject to the former's control and (2) the consent of the latter to so act.

INSTRUCTION NO. 31

The right to recover for a misrepresentation or omission is not restricted to the immediate parties making the contract, and a false representation or omission need not be made directly to the party seeking recovery. However, the elements for fraudulent misrepresentation or omission (except for the existence of damages) must be proven with respect to the immediate parties to the contract.

INSTRUCTION NO. 32

I will now provide you with certain instructions on determining what, if any, damages a party is entitled to receive. The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to which party is entitled to your verdicts in this case. Instructions as to the measure of damages are given only for your guidance, in the event that you should find that Village Green is entitled to damages in accord with the other Instructions.

You must not award damages under these Instructions by way of sympathy or punishment. Remember that, throughout your deliberations on damages, as on all other issues, you must not engage in any speculation, guess or conjecture. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any of the parties. Rather, you must use your sound judgment based upon an impartial consideration of the evidence.

The damages you award must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract or at the time representation, omission or interference with contract occurred. The damages must flow directly, naturally and proximately from the interference or the Plaintiffs' justifiable reliance on the representation/omission. Speculative damages are not recoverable, instead, damages must be established with reasonable certainty.

You must enter separate amounts for each item of damages on the Verdict Form and must not include the same items on more than one category.

In arriving at the amount of damages on a claim, you cannot establish a figure by taking down the estimate of each juror as to damage and agreeing in advance that the average of those estimates shall be your award of damages for that claim.

INSTRUCTION NO. 33

The measure of damages for fraud is an amount that would place Village Green in as good a position as they would have enjoyed if the fraud had not occurred.

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

1. The expenses incurred by Village Green to remediate and repair defects;
2. The difference in value between what Village Green paid for the Property and its value at the time of purchase.

You may not award both the fair and reasonable cost of repairs and the difference in value as damages – only one or the other.

INSTRUCTION NO. 34

Punitive damages may be awarded if the Plaintiff has proven by clear, convincing, and satisfactory evidence that a 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. Although you may consider harm to others in determining the nature of Defendant's conduct, you may not award punitive damages to punish the Defendant for harm caused to others, or for out-of-state conduct that was lawful where it occurred, or for any conduct by the Defendant that is not similar to the conduct which caused the harm to the Plaintiff in this case.

INSTRUCTION NO. 35

Punitive damages are only awardable when actual or legal malice is shown. Actual malice is characterized by such factors as personal spite, hatred, or ill will while legal malice is shown by wrongful conduct committed or continued with a willful or reckless disregard for another's rights.

INSTRUCTION NO. 36

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.

INSTRUCTION NO. 37

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. 38

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.

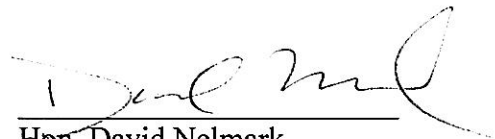
Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown 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. 39

I am giving you one verdict forms containing 11 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 1:45 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 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 Judicial Assistant.


Hon. David Nelmark
Judge, 5th Judicial District of Iowa