

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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| 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. | CASE NO. LACL153918 PLAINTIFFS' OBJECTIONS TO THE COURT'S PROPOSED JURY INSTRUCTIONS |
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Plaintiffs Village Green LLC and Village on Grand LLC (together, "Village Green") object to the court's proposed jury instructions as set forth below.

I. Objections to Proposed Instructions Nos. 23 and 32.

Plaintiffs object to instructions Nos. 23 and 32 because they communicate the same point and unduly emphasize Defendants' position. "Iowa law requires a court give a requested instruction as long as the instruction is a correct statement of law, is applicable to the case, and is not otherwise embodied elsewhere in the instructions." *Eisenhauer ex rel. T.D. v. Henry Cnty. Health Ctr.*, 935 N.W.2d 1, 10 (Iowa 2019). A court should not give instructions "that provide undue emphasis to any particular aspect of the case" or "that duplicate specifications adequately encompassed elsewhere in the instructions." *Id.*; *Grams v. Renner*, No. 08-1269, 2009 WL 2184826, at *4 (Iowa Ct. App. July 22, 2009) (explaining that jury instructions "should not give undue prominence to any particular

aspect of a case"). In fashioning instructions, a judge "should walk a middle course and avoid arguing the case for either side in the instructions." *State v. Massick*, 511 N.W.2d 384, 386 (Iowa 1994) (internal quotation omitted). "An instruction may constitute reversible error if it unduly emphasizes a particular theory." *Grams*, 2009 WL 2184826, at *4. Jury instructions may unduly emphasize a point of law where a concept found in one instruction already is covered elsewhere in the instructions. *See id.*

The instructions address the same legal concepts, which unduly emphasizes that aspect of Defendants' position. Parts of the instructions include almost word-for-word recitations. In fact, in the joint proposed instructions, they literally are word-for-word identical instructions, including identical supporting authority. By including two instructions on the same concept, the court emphasizes that point of law. Defendants should receive only one instruction on this issue.

II. Objections to Proposed Instructions Nos. 17, 24, 25, 37, 38.

Plaintiffs object to Defendants' proposed waiver instructions. Waiver is an affirmative defense to fraud only in limited circumstances, which do not apply here. A party waives its claim to fraud only when that party "with knowledge of a potential fraud enters into a new agreement concerning the same subject matter." *Whalen v. Connelly*, 545 N.W.2d 284, 294 (Iowa 1996). In other words, "acts done in affirmance of the contract can amount to a waiver of the fraud *only* . . . where they are done with full knowledge of the fraud and of all material facts, and with the intention clearly manifested of abiding by the

contract.” *Ankeney v. Brenton*, 238 N.W. 71, 75 (Iowa 1931) (internal quotation omitted); see *Lee Cnty. v. IASD Health Serv. Corp.*, No. LALA001334, 2000 WL 290367, at *12 (Iowa Dist. Ct. Feb. 9, 2000); 37 Am. Jur. 2d *Fraud & Deceit* § 302 (2025) (explaining that for a defrauded party to waive the right to sue, “the waiving party must be aware of the fraud and possess adequate knowledge of all of its material aspects, intend to affirm the contract, and intend to abandon the right to recover damages for loss resulting from fraud”).

No evidence shows that Plaintiffs had adequate knowledge of every material aspect of the fraudulent misrepresentations or nondisclosures before signing the purchase agreement or before closing. Nor have Defendants ever argued that Plaintiffs entered a new agreement with them after discovering their fraud. As a result, Plaintiffs did not waive their fraud claims. See *Lee Cnty.*, 2000 WL 290367, at *12; *Renfro v. Swift Eckrich, Inc.*, 53 F.3d 1460, 1465 (8th Cir. 1995) (deciding that plaintiffs did not waive their right to assert fraud because the evidence at trial did not indicate that the plaintiffs had prior knowledge of the manipulation of data or false recordings). Plaintiffs did not have full knowledge of the fraud and all material facts, see *Ankeney*, 238 N.W. at 75, and showed no intention to abandon any right to recover damages from Defendants’ fraudulent behavior. See 37 Am. Jur. 2d *Fraud & Deceit* § 302. Defendants are not entitled to a jury instruction on waiver.

III. Objections to Proposed Instruction No. 40.

Plaintiffs object to the statements of law described in paragraphs four (“In determining . . .”) and five (“If the cost to repair . . .”) of instruction No. 40. The correct measure for damages is set forth in *Putman v. Walther*, 973 N.W.2d 857, 864 (Iowa 2022). “Iowa recognizes two measures of damages for fraud cases: (1) benefit of the bargain plus consequential damages and (2) out of pocket expenses.” *Id.* Thus, the calculation of damages includes “the pecuniary loss suffered as a result of the recipient’s reliance upon the misrepresentation, the difference in value between what was received and what was paid, and the lost benefit of the bargain.” *Id.* At bottom, Village Green “is entitled to recover those losses proximately caused by reliance on the misrepresentation.” *Id.*

Defendants invoke *Ag Partners, L.L.C. v. Chicago Cent. & Pac. R.R. Co.*, but it does not apply. 726 N.W.2d 711, 716 (Iowa 2007). The discussion of damages there relates only to claims of negligence—there were no fraud claims at issue. *Id.* at 713 (stating that the plaintiff only “alleged negligence and trespass as theories of recovery in its lawsuit”). The same is true of the other cases that Defendants cite in their proposed instruction. *See Dealers Hobby, Inc. v. Marie Ann Realty Co.*, 255 N.W.2d 131 (Iowa 1977) (calculating damages for a breach of warranty claim); *State v. Urbanek*, 177 N.W.2d 14 (Iowa 1970) (calculating damages caused by a truck collision); *DeWaay v. Muhr*, 160 N.W.2d 454 (Iowa 1968) (calculating damages for a breach of contract claim). Defendants’ statement of the law is incorrect and based on cases that do not involve a claim for fraud.

Dated: February 4, 2025.

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Certificate of Service

The undersigned hereby certifies that on February 4, 2025 the foregoing document was electronically filed with the Clerk of Court using the EDMS system which will send a notice of electronic filing to all counsel of record registered with the EDMS system.

/s/ Christina Laage

