

IN THE IOWA DISTRICT COURT FOR CEDAR COUNTY

MARK E. BUTZ and)
BUTZ-HILL EXPORTS, INC.,)

Case No. LACV037047

Plaintiffs-Counterclaim Defendants,)

vs.)

JURY INSTRUCTIONS

LEE P. KURTENBACH,)

Defendant-Counterclaim Plaintiff.)

Statement of the Case

Ladies and Gentlemen of the Jury:

This dispute between Mark E. Butz (Mark) and Butz-Hill Exports, Inc. (Butz-Hill), as Plaintiffs-Counterclaim Defendants, and Lee P. Kurtenbach, as Defendant-Counterclaimant, grows out of an Operating Agreement dated July 28, 2021.

INSTRUCTION NO. 1

Duties Of Judge And Jury/Instructions as a Whole: 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 single instruction includes all of the applicable law. Your duty is to decide all fact questions. The order in which I give these instructions is not important.

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. 2

Evidence: 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 of the courtroom.

INSTRUCTION NO. 3

Credibility Of Witnesses: 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 that 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. 4

General Instruction to Jury: Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see that discussions are carried on in an orderly fashion, that issues are fully and freely discussed, and that 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; you are judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 5

Corporate Party: The fact that a plaintiff or defendant is a corporation should not affect your decision. All person are equal before the law, and corporations, whether large or small, are as entitled to your fair and conscientious consideration as any other person.

INSTRUCTION NO. 6

Cautionary Instruction - Juror's Notes: 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. 7

Use of Electronic Devices: 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, 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. 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, then 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. 8

Fraudulent Non-disclosure - Essentials For Recovery: Butz/Butz-Hill must prove all of the following propositions by a preponderance of clear, satisfactory, and convincing evidence:

1. Special circumstances existed which gave rise to a duty of disclosure between the plaintiff and the defendant. Kurtenbach was the seller of real property to Butz/Butz Hill.
2. While such relationship existed, Kurtenbach was aware that he had entered a logging contract whose deadlines extended beyond Kurtenbach's ownership of the property.
3. While the relationship existed, Kurtenbach concealed or failed to disclose his sale of trees.
4. The undisclosed information was material to the transaction.
5. Kurtenbach knowingly failed to make the disclosure.
6. Kurtenbach intended to deceive Butz/Butz-Hill by withholding the information.
7. Butz/Butz-Hill acted in reliance upon the defendant's failure to disclose and was justified in such reliance.
8. The failure to disclose was a cause of the damages to Butz/Butz-Hill.
9. The nature and extent of the damage.

If Butz/Butz-Hill have failed to prove any of these propositions, Butz/Butz-Hill cannot recover damages. If Butz/Butz-Hill have proved all of these propositions, they are entitled to recover damages in some amount.

INSTRUCTION NO. 9

Fraud—Reliance Interest: The measure of damages for fraudulent nondisclosure is an amount that will reimburse Butz/Butz-Hill's loss caused by their reliance on Kurtenbach's nondisclosure and place them in as good a position as if there had been no nondisclosure.

The damages you award for nondisclosure must have been foreseeable or have been reasonably foreseen at the time no disclosure was made.

INSTRUCTION NO. 10

Pre-existing Logging Contract: Defendant argues that the May 10, 2020, logging contract predated the July 28, 2021, agreement and that Plaintiffs were aware of the logging activities. If you find that the logging contract was disclosed or that Plaintiffs were aware of it, this may negate Plaintiffs claims for fraud.

INSTRUCTION NO. 11

Burden of Proof:

1. For the fraud claim, Plaintiffs must prove their case by clear and convincing evidence, a higher standard than preponderance of the evidence.
2. For the interference with quiet enjoyment ^{1025C} ~~claim~~, Defendant must prove his case by a preponderance of the evidence, meaning it is more likely than not that his claims are true.

INSTRUCTION NO. 12

Damages for Plaintiff: If you find in favor of Plaintiffs on any of their claim, you must determine the amount of damages to award. Damages may include:

1. Actual damages incurred as a result of the fraud committed by Defendant against Plaintiffs.

INSTRUCTION NO. 13

Damages for Defendant: If you find in favor of Defendant on any of their claim, you must determine the amount of damages to award. Damages may include:

1. Actual damages as a result of interference with quiet enjoyment

INSTRUCTION NO. 14

You must consider each claim and defense separately. Apply the law as I have instructed you to the facts as you find them.

INSTRUCTION NO. 15

Interference with Right of Quiet Enjoyment: Kurtenbach claims that Butz/Butz-Hill have interfered with his tenancy and breaching the covenant of quiet enjoyment by improperly attempting to change the rent, threatening to terminate the lease without any basis, bringing an action to terminate the lease, and serving a notice of termination. Under Iowa law, a tenant who is disturbed in their possession may without surrendering possession of the property recover damages for breach of the covenant of quiet enjoyment. Kurtenbach must prove the following:

1. That Kurtenbach was lawfully in the possession of the premises as a tenant under the July 28, 2021 agreement.
2. Butz and/or Butz-Hill took actions that substantially interfered with the tenant's quiet enjoyment of the property, and the interference was more than a mere inconvenience or annoyance.
3. Those actions caused damages to Kurtenbach.

If you find Kurtenbach proved these elements, you should award Kurtenbach damages.

To establish a violation of quiet use and enjoyment, the tenant must prove:

- A. The landlord or someone acting on the landlord's behalf substantially interfered with the tenant's use of the property; and
- B. The interference was more than a mere inconvenience or annoyance.

Substantial interference may include, but is not limited to:

- A. Unlawful entry by the landlord.
- B. Harassment or threats by the landlord.
- C. Unreasonable restrictions on the tenant's access to the property.

Limitations: The right to quiet use and enjoyment does not prevent the landlord from:

- A. Entering the property for legitimate purposes with proper notice
- B. Enforcing reasonable rules and regulations

Reasonableness Standard: In determining whether an interference is substantial, you must consider what a reasonable person would find intolerable under the circumstances.

INSTRUCTION NO. 16

Definition—Quiet Use and Enjoyment: Under Iowa law, "quiet use and enjoyment" refers to a tenant's right to possess and use rented property without substantial interference from the landlord or others claiming rights through the landlord.

INSTRUCTION NO. 17

Definition—Willful and Wanton Conduct: Conduct constitutes willful and wanton disregard for the rights or safety of another when it involves an intentional act of unreasonable character, performed in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow. Such conduct is usually accompanied by a conscious indifference to the consequences.

INSTRUCTION NO. 18

Malice: To find willful and wanton disregard, you must determine that the Plaintiffs, acted with either actual malice, characterized by personal spite, hatred, or ill will, or legal malice, characterized by wrongful conduct committed or continued with a willful or reckless disregard for another's rights. Mere negligence cannot constitute malice or willful or wanton disregard.

INSTRUCTION NO. 19

Ordinary Care - Common Law Negligence - Defined. "Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

VERDICT FORMS

Return Of Verdict - Forms Of Verdict. I am giving you three verdict forms. 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 12:00 o'clock P.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the verdict. 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.

VERDICT FORMS

Return Of Verdict - Forms Of Verdict. I am giving you one verdict form. 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 _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the verdict. 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

Punitive Damages: Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the 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 similar 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. *If applicable, add:* 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. 23

Punitive Damages Against a Principal or Employer: Principal is liable for the punitive damages by reason of the acts of (employee or agent) if one of the following occurred:

1. The principal authorized the act and the way it was done; or
2. The agent was unfit and the principal was reckless in employing or retaining him; or
3. The agent was employed in a managerial capacity and was acting in the scope of employment; or
4. The principal ratified or approved the act.