

**FILED**

APR 12 2024

CLERK DISTRICT COURT  
BOONE COUNTY, IOWA }

IN THE IOWA DISTRICT COURT FOR BOONE COUNTY

MICHAEL MORRISEY,	)	
	)	
Plaintiff,	)	NO. LACV041812
Vs.	)	JURY INSTRUCTIONS
ALL IOWA HOMES, INC.,	)	
Defendants.	)	

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## STATEMENT OF THE CASE

Members of the jury, this is a civil case brought by the Plaintiff Michael Morrisey against the Defendants All Iowa Homes, Inc. Plaintiff claims that the Defendant All Iowa Homes, Inc., did not disclose certain defects with regard to a house that he purchased from All Iowa Homes, Inc. Plaintiff claims the failure to disclose defects violated the seller's obligation to disclose the information and constituted a material breach of the sale contract. Plaintiff also claims that the Defendant made misrepresentations to him.

Plaintiff claims he incurred economic damages as a result.

The Defendant denies Plaintiff's claims and asserts the affirmative defense of waiver.

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.   /  

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. 2

Whenever a party must prove something they must do so by the preponderance of the evidence, unless the instruction states otherwise.

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.
2. Exhibits received by the Court.
3. Stipulations, which are agreements between the attorneys.
4. Any other matter admitted into evidence (for example, answers to interrogatories, matters of which judicial notice is 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

Certain testimony has been read into evidence from a 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. 5

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. 6

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 witness's 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 witness's appearance, conduct, age, intelligence, memory, and knowledge of the facts; and,
3. The witness's interest in the trial, their motive, candor, bias, and prejudice.

INSTRUCTION NO. 7

You have heard evidence claiming a 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. 8

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. 9

You have heard evidence claiming a witness made statements before this trial 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 witness made it under oath during the trial.

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

INSTRUCTION NO. 10

Iowa law requires a seller of real estate to complete a written disclosure form which informs the purchaser of the condition and important characteristics of the property and structures located on the property, including significant defects in the structural integrity of the structure.

A person who fails to make the required disclosures shall be liable to the purchaser for the amount of actual damages suffered by the purchaser, but subject to the following limitations:

1. The seller shall not be liable for an error, inaccuracy, or omission in information required in a disclosure statement, unless the seller had actual knowledge of the inaccuracy, or failed to exercise ordinary care in obtaining the information.
2. For purposes of satisfying the requirements of the disclosure statement, the seller shall not be liable for any matter other than a matter within the seller's practice, profession, or expertise, and which is required by the disclosure statement, unless the person failed to use care ordinary in the person's profession, practice, or area of expertise in preparing the information.

INSTRUCTION NO. 11

Before Plaintiff can recover on his claim of failure to disclose against Defendant, he must prove all of the following propositions.

1. Defendant failed to include information (in error, inaccuracy, or omission) relating to the condition and important characteristics of the property and structures located on the property, including significant defects in the structural integrity of the structure; and
2. Defendant had actual knowledge of the information or failed to exercise ordinary care in obtaining the information;
3. Defendant's failure to disclose was a proximate cause of Plaintiff's damages;
4. The amount of actual damages.

If the Plaintiff has failed to prove any one or more of these propositions, he is not entitled to recover damages.

If the Plaintiff has proven all of these propositions, then you will consider the defense of waiver as explained in Instruction No. 12. If Defendant has proven his affirmative defense of waiver, then Plaintiff is not entitled to recover damages.

If Plaintiff has proven all of these propositions, and the Defendant has not proven his affirmative defense of waiver, then Plaintiff is entitled to recover damages in some amount.

INSTRUCTION NO. 11A

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. “Substantial” means the parties’ conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

INSTRUCTION NO. 12

As an affirmative defense, Defendant claims that Plaintiff waived all alleged deficiencies in the disclosure statements and that any alleged deficiencies in the disclosure statements were not a proximate cause of any damages Plaintiff may have suffered.

If you find by a preponderance of the evidence that Defendant has proven his affirmative defense that Plaintiff waived all objections to the alleged deficiencies in the disclosure statements, then the alleged deficiencies are not the proximate cause of any damages Plaintiff suffered, and you must find in favor of the Defendant on the failure to disclose claim.

INSTRUCTION NO. 13

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 Plaintiff’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.

INSTRUCTION NO. 14

Before Plaintiff can recover on his claim of breach of contract, he must prove all of the following propositions:

1. The parties were capable of contracting;
2. The existence of a contract;
3. The Plaintiff has done what the contract requires;
4. The Defendant has breached the contract;
5. The amount of any damage Defendant has caused.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages. If the Plaintiff has proven all of these propositions, then you will consider the defense of waiver as explained in Instruction No. 12. If Defendant has proven his affirmative defense of waiver, then Plaintiff is not entitled to recover damages.

If Plaintiff has proven all of these propositions, and the Defendant has not proven his affirmative defense of waiver, then Plaintiff is entitled to recover damages in some amount.



INSTRUCTION NO. 15

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

INSTRUCTION NO. 16a

Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.

The duty of good faith is meant to give the parties what they would have stipulated for at the time of contracting if they could have foreseen all future promises of performance.

INSTRUCTION NO. 17

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

INSTRUCTION NO. 18

Before Plaintiff can recover on his claim of fraudulent misrepresentation, he must prove all of the following propositions by a preponderance of clear, satisfactory, and convincing evidence:

1. Prior to the closing of the house sale, Defendant made one or more representations to the Plaintiff regarding repairs, renovations, or improvements made to the home and regarding the condition of the home;
2. The representations were false;
3. The representations were material;
4. The Defendant knew the representations were false;
5. The Defendant intended to deceive Plaintiff;
6. The Plaintiff 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 Plaintiff's damage;
8. The amount of damage.

If the Plaintiff has failed to prove any one or more of these propositions, he is not entitled to recover damages. If he has proven all of these propositions, he is entitled to recover damages in some amount.

INSTRUCTION NO. 19

Concerning proposition No. 1 of Instruction No. 18, a “representation” is any word or conduct asserting the existence of a fact. It may include silence if the Defendant fails to disclose information which the Defendant had a duty to disclose and which the Plaintiff had reason to believe would be disclosed. A seller’s statements of repairs, renovations, and improvements made to the house is a representation of fact, even if the words “more or less” are used. The words “more or less” indicate that the repairs, renovations, and improvements made to the house are substantially the same as stated by the seller. A representation of fact includes an opinion expressed for the deliberate purpose of deceiving another. A representation of fact includes a promise to perform a future act.

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. A representation of fact implies that the maker has definite knowledge or information supporting his statement while 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. 20

Concerning proposition No. 3 of Instruction No. 18, a representation is “material” if:

1. A reasonable person would consider it as important in making a decision;
2. The Defendant knew or had reason to know that the Plaintiff considered or would be likely to consider the representation as important in making a decision;
3. The representation influenced a person to enter into a transaction, which would not have occurred otherwise.

INSTRUCTION NO. 21

Concerning proposition No. 4 of Instruction No. 18, 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 its personal knowledge or investigation;
4. The Defendant made a representation which it knew or believed was materially misleading because it left out unfavorable information;
5. The Defendant stated its intentions to do or not do something when it did not actually have that intention;
6. The Defendant knew the representation could be understood in both a true and false manner, and made the representation (a) intending that it be understood in the false sense, (b) having no belief as to how it would be understood, or (c) in reckless disregard in how it would be understood.

INSTRUCTION NO. 22

Concerning proposition No. 5 of Instruction No. 18, 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 in all likelihood be deceived;
2. The Defendant had information from which a reasonable person would conclude the Plaintiff would be deceived;
3. The Defendant made the representation without concern for the truth.



INSTRUCTION NO. 23

Concerning proposition No. 6 of Instruction No. 18, the person receiving the information must rely on the information and the reliance must be justifiable.

It is not necessary that the information be the only reason for the action taken by the Plaintiff. It is enough if the information had a material influence on the Plaintiff's conduct and was a substantial factor in bringing about the action.

Reliance is justified when a reasonably careful person would be justified in relying on the information supplied. Reliance is not justified if the person receiving the information knew or in the exercise of ordinary care should know that the information is false.

INSTRUCTION NO. 24

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 like conduct in the future.

There is no exact rule to determine the amount of punitive damages, if any, you should award. In fixing the amount of punitive damages, you may consider all of the evidence including:

1. The nature of Defendant's conduct;
2. The amount of punitive damages which will punish and discourage like conduct by the Defendant in view of its financial condition.
3. The Plaintiff's actual damages.

INSTRUCTION NO. 25

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. 26

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another amount of damage.

INSTRUCTION NO. 27

In arriving at any amount of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an amount of damage and agreeing in advance that the average of those estimates will be the jury's amount of damage.

INSTRUCTION NO. 28

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. 29

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.

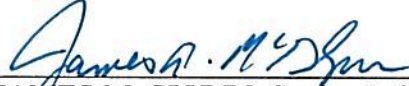
INSTRUCTION NO. 30

I am giving you a 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 and interrogatories must be signed by your foreman or forewoman.

After deliberating for six hours from <sup>JAN 1:45</sup>~~11:45~~ o'clock <sup>P.M.</sup>A.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.

Signed at <sup>1:45 JAN</sup>~~11:45~~ o'clock A.M., this 12<sup>th</sup> day of April, 2024.

  
JAMES McGLYNN, Senior Judge  
Second Judicial District  
State of Iowa