

IN THE IOWA DISTRICT COURT FOR WINNESHIEK COUNTY

KEVIN MOELLERS and GAYLEEN MOELLERS, Plaintiffs, VS. J. P. FITZGERALD INC., d/b/a FITZGERALD INC., Defendant.	Case No. LACV026203 JURY INSTRUCTIONS
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MEMBERS OF THE JURY:

You are given the attached instructions explaining Iowa law to you for your use in reaching a verdict in this case.

DATED: December 19, 2018

John Bauercamper
John Bauercamper, District Judge

INSTRUCTION NO. 1

STATEMENT OF THE CASE

The plaintiffs, Kevin Moellers and Gayleen Moellers, claim that they entered into a contract with the defendant, J.P. Fitzgerald Inc. doing business as Fitzgerald Inc., for the purchase, installation, maintenance, and repair of dairy equipment at their dairy farm in Winneshiek County, Iowa. The plaintiffs Moellers claim that the defendant Fitzgerald Inc. breached the contract by failing to properly install the equipment it sold to the Moellers, and that it also failed to properly maintain and repair the equipment. The plaintiffs claim that they have suffered damages as a result of the breach of contract and that they are not obligated to pay any remaining balance claimed due on the contract.

The defendant, Fitzgerald Inc., denies that it breached the contract with the Moellers. Fitzgerald Inc. further claims that the Moellers owe money to Fitzgerald Inc. for the work performed by Fitzgerald Inc. at the Moellers' dairy farm.

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

DUTY OF JUDGE AND JURY

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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

INSTRUCTION NO. 3

CAUTIONARY INSTRUCTION

I have not by these instructions or by any ruling made, or by any act done, or by anything said during the trial, intended or attempted to give any opinion as to what the facts are, what the proof is, nor what your verdict should be.

INSTRUCTION NO. 4

CORPORATE PARTY

The fact that a party to this case is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 5

BURDEN OF PROOF

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. 6

EVIDENCE DEFINED

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 of fact agreed to by all parties.
4. Anything else the court admitted as evidence.

Evidence may be direct or circumstantial evidence. 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

DIRECT AND CIRCUMSTANTIAL EVIDENCE EXPLAINED

Facts may be proved by direct evidence, circumstantial evidence, or both. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses.

Circumstantial evidence refers to proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

The law makes no distinction between direct and circumstantial evidence but simply requires the jury find the facts in accordance with a preponderance of all the evidence in the case.

INSTRUCTION NO. 8

DEFINITION OF TERMS

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.

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 in court.

INSTRUCTION NO. 9

WITNESS CREDIBILITY

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

INSTRUCTION NO. 10

STATEMENTS BY A PARTY OPPONENT

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

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

If you find such a statement was made and was inconsistent with that 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 that party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 11

STATEMENTS BY NON-PARTY WITNESSES

You have heard evidence claiming a witness made statements before this trial while under oath which were inconsistent with what the witness 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 the 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. 12

EXPERT WITNESS CREDIBILITY

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.

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the

question has not been proved by the evidence, you should decide if that omission affects the value of the 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. 13

PLAINTIFFS' BREACH OF CONTRACT CLAIM – ESSENTIALS FOR RECOVERY

To recover against the defendant, J. P. Fitzgerald Inc. doing business as Fitzgerald Inc., for breach of contract, the plaintiffs, Kevin Moellers and Gayleen Moellers, must prove all of the following propositions:

1. The existence of a contract.
2. The terms of the contract, including a term that defendant would provide proper equipment, maintain and repair the equipment it sold to the Moellers.
3. The plaintiffs have done what the contract requires.
4. The defendant has breached the contract, by failing to provide correct equipment and in failing to install, repair or maintain the equipment.
5. The amount of any damage the defendant has caused.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proved all of these propositions, the plaintiffs are entitled to award of damages in some amount.

INSTRUCTION NO. 14

EXISTENCE OF A CONTRACT

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.

Both oral and written contracts are valid and enforceable.

INSTRUCTION NO. 15

TERMS OF A CONTRACT

In determining the terms of the contract, you may consider the following:

1. The intent of the parties, along with a reasonable application of the surrounding circumstances.
2. The intent expressed in the language used prevails over any secret intention of either party.
3. The intent may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.
4. You must attempt to give meaning to all language of a contract. Because an agreement is to be interpreted as a whole, assume that all of the language is necessary. An interpretation which gives a reasonable effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless.
5. The meaning of a contract is the interpretation a reasonable person would give it if they were acquainted with the circumstances both before and at the time the contract was made.
6. Ambiguous language in a written contract is interpreted against the party who selected it.
7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

INSTRUCTION NO. 16

BREACH OF CONTRACT

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

INSTRUCTION NO. 17

CAUSATION

A breach of contract is a cause of damage when the damage would not have happened but for the breach.

INSTRUCTION NO. 18

PLAINTIFFS' DAMAGE CLAIM

The measure of damages for breach of contract is an amount that would place the plaintiffs Kevin Moellers and Gayleen Moellers in as good a position as they would have enjoyed if the contract had been performed.

The damages you award for breach of contract must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract.

If you find the plaintiffs are entitled to recover damages, it is your duty to determine the amount. In doing so, you may consider the following items:

1. Profits lost due to reduced milk production.
2. Economic loss due to excess cow death and culling.
3. Profits lost due to loss of milk quality premiums.

The amount you assess for any item of damage must not exceed the amount caused by the defendant as proved by the evidence.

A party cannot recover duplicate damages. Any amount awarded under one item of damage should not be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the verdict form.

INSTRUCTION NO. 19

FAILURE TO MITIGATE DAMAGES

The defendant claims that the plaintiffs failed to mitigate their damages, by their failure to detect and correct dairy equipment malfunctions on a timely basis

The plaintiffs have a duty to exercise ordinary care to reduce, minimize or limit their damages. However, the plaintiffs have no duty to do something that is unreasonable under the circumstances, such as undertake actions which are unreasonably expensive or which imposes unreasonable inconvenience.

To prove defendant's claim of failure to mitigate, the defendant must prove all of the following:

1. There was something the plaintiffs could do to mitigate their damages;

2. Requiring the plaintiffs to do so was reasonable under the circumstances;
 3. The plaintiffs acted unreasonably in failing to undertake the mitigating activity;
- and
4. The plaintiffs' failure to undertake the mitigating activity caused an identifiable portion of their damages.

If you find that the defendant has proved all of these propositions, it has established its claim that the plaintiffs failed to mitigate their damages. You should then consider their failure to mitigate damages in determining the amount of damages, if any, that you award to the plaintiffs.

INSTRUCTION NO. 20

DEFENDANT'S BREACH OF CONTRACT CLAIM – ESSENTIALS FOR RECOVERY

To recover against the plaintiffs, Kevin Moellers and Gayleen Moellers, for breach of contract, the defendant, J. P. Fitzgerald Inc. doing business as Fitzgerald Inc., must prove all of the following propositions:

1. The plaintiffs, Kevin Moellers and Gayleen Moellers, contracted with J. P. Fitzgerald Inc., doing business as Fitzgerald Inc. for the installation, maintenance and service of milking equipment on the Moellers' dairy farm.
2. The defendant, Fitzgerald, Inc., provided the goods and services.
3. The plaintiffs Moellers did not pay for the goods and services provided to them.
4. The amount of damages caused by the plaintiffs.

If the defendant, Fitzgerald Inc., has failed to prove any of these propositions, then it is not entitled to recover on its claim for damages. If Fitzgerald, Inc. has proved all of these propositions, then it is entitled to recover damages in some amount.

INSTRUCTION NO. 21

IMPLIED CONTRACT

The law implies a promise to pay the reasonable value of services and materials a person knowingly accepts from another.

INSTRUCTION NO. 22

IMPLIED CONTRACT AS TO COMPENSATION

When a person employs someone to provide services and materials without agreeing on the amount of pay, an agreement is implied to pay the reasonable value of those services and materials.

INSTRUCTION NO. 23

DEFENDANT'S DAMAGE CLAIM

The measure of damages for breach of contract is an amount that would place the defendant, Fitzgerald Inc., in as good a position as it would have enjoyed if the contract had been performed.

If you find the defendant, Fitzgerald Inc., is entitled to recover damages from the plaintiffs, Kevin Moellers and Gayleen Moellers, it is your duty to determine the amount. In doing so, you may consider the following item: reasonable value of the goods and services provided by the defendant to the plaintiffs.

The amount, if any, you find for the above item will be used to answer the verdict form.

INSTRUCTION NO. 24

DO NOT AVERAGE

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 25

JUROR 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. 26

JURY DELIBERATIONS

When you begin your deliberations, you should select a foreperson. He or she shall see that your deliberations are carried on in an orderly manner, that the issues are fully and freely discussed, and that every juror is given an opportunity to express his or her views.

It is your duty as jurors to consult with one another and reach an agreement, if you can do so without compromising your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors.

During your deliberations, do not hesitate to re-examine your view and change your opinion if convinced it is wrong. But do not change your opinion as to the weight or effect of the evidence just because it is the opinion of the other jurors, or for the mere purpose of returning a verdict. Remember, you are judges of the facts. Your sole duty is to find the truth and do justice.

Sometimes during jury deliberations, questions come up about the court's Instructions or the evidence that the jury wants answered. Normally, a question about the Instructions can be answered by just carefully re-reading them. A typed record of the witness' testimony presented during the trial is not available. Neither can you review depositions or other papers and reports used by the lawyers or witnesses during the trial that were not received into evidence by the court as trial exhibits.

If you do believe it is necessary for you to ask the court a question, you must do so in writing and it must be signed by your Foreperson. I cannot answer your question without first discussing your question with the attorneys. This takes time and deliberation before I can reply to a question.

The Court Attendant who is working with you has taken an oath not to talk with you about the trial, the evidence or the court's instructions. He or she may only ask you whether or not you have agreed upon a verdict, deliver messages to and from the jury, and arrange for meals and recesses during deliberations. Please do not ask the Court Attendant any questions about any other subject.

INSTRUCTION NO. 27

RETURN OF VERDICT

I am giving you a verdict containing questions for you to answer. Your verdict must be unanimous. If you all agree, the verdict must be signed by your foreperson.

When you have appropriately signed the verdict, tell the Court Attendant.

You will then be taken into the courtroom in the presence of the Court, the attorneys, the plaintiff, the defendants, and any spectators who may be present. The court will ask your Foreperson to present the Verdict and I will read the verdict out loud.

Your admonition will also be terminated after I have accepted your verdict, and you will be permitted to discuss this case with anyone, if you decide to do so. However, you are not required to discuss this case and your jury service with anyone if you do not want to do so. You are not required to answer any questions from the lawyers, news media, or anyone else. If some legal reason ever comes up which may require you to answer questions about this case, I will notify you in writing about this. Such a situation rarely occurs.

IN THE IOWA DISTRICT COURT FOR WINNESHIEK COUNTY

KEVIN MOELLERS and GAYLEEN MOELLERS, VS. J. P. FITZGERALD INC., d/b/a FITZGERALD INC.,	Plaintiffs, Defendant.	Case No. LACV026203 JURY VERDICT
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We, the Jury, submit the following Verdict on the questions given to us:

Question No. 1: Did the plaintiffs prove their claim of breach of contract by the defendant?
Answer "yes" or "no."

ANSWER: _____ [If your answer is "no", do not answer Question No. 2]

Question No. 2: State the amount of the plaintiffs', damages that were caused by the defendant, as to each of the following items of damage. If the plaintiffs have failed to prove any item of damage, or have failed to prove that any item of damage was caused by the defendant, enter 0 for that item.

Profits lost due to reduced milk production. \$ _____

Economic Loss due to excess cow death and culling \$ _____

Profits Lost due to loss of quality premiums \$ _____

Question No. 3: Did the defendant prove its claim of breach of contract by the plaintiffs?
Answer "yes" or "no."

ANSWER: _____ [If your answer is "no", do not answer Question No. 4]

Question No.4: State the amount of the defendant's damages that were caused by the plaintiffs, as to the following item of damage. If the defendant has failed to prove its item of damage, enter 0 for that item.

Goods and services provided to plaintiffs \$ _____

FOREPERSON

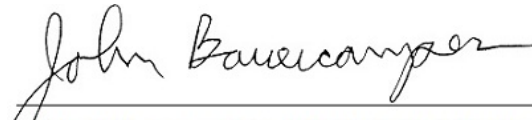


State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
LACV026203	KEVIN & GAYLEEN MOELLERS V JP FITZGERALD, INC

So Ordered



John J. Bauercamper, District Court Judge,
First Judicial District of Iowa