

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

H.L. CONSTRUCTION, LLC, aka H.L.)
HOMEBUILDER, LLC, and QUAD CITY)
ROOTER & PLUMBING, INC.)

Plaintiffs,)

v.)

JONATHAN UHL & JUSTINE UHL,)

Defendants,)

JONATHAN UHL & JUSTINE UHL,)

Counterclaim Plaintiffs,)

v.)

H.L. CONSTRUCTION, LLC, aka H.L.)
HOMEBUILDER, LLC,)

Counterclaim Defendant.)

CASE NO. LACE130366

JURY INSTRUCTIONS

Members of the Jury: In this case Plaintiffs, H.L. Construction, LLC, aka H.L. Homebuilder, LLC, and Quad City Rooter & Plumbing, Inc., claim Defendants, Jonathan Uhl & Justine Uhl, breached a written Residential Construction Agreement between the parties by which Plaintiff, H.L. Construction, aka H.L. Homebuilder, LLC, agreed to build a new home located at 3121 Lorton Avenue, Davenport, Iowa, 52807. Plaintiffs seek damages resulting from Defendants' alleged breach of the Residential Construction Agreement. Defendants, Jonathan and Justine Uhl deny Plaintiffs' claim and claim they fully performed their obligations under the written Residential Construction Agreement. In the alternative, Plaintiffs also seek damages resulting from the unjust enrichment of Defendants. Defendants deny Plaintiffs' claim and claim they were not unjustly enriched.

Defendants, Jonathan Uhl and Justine Uhl, have also counterclaimed against Plaintiff, H.L. Construction, LLC, aka H.L. Homebuilder, LLC, for breach of the same written Residential Construction Agreement. Defendants seek recovery for damages resulting from Plaintiff's alleged breach of the Residential Construction Agreement. Plaintiff denies it breached the written Residential Construction Agreement and denies Defendants' damages are a result of the alleged breach.

Defendants also claim Plaintiff breached an express warranty contained within the language of the Residential Construction Agreement. Defendants seek recovery for damages resulting from Plaintiff's alleged breach of the express warranty contained within the language of the Residential Construction Agreement. Plaintiff denies it breached the express warranty contained within the Residential Construction Agreement and denies Defendants' damages are a result of the alleged breach of the express warranty.

Defendants also claim Plaintiff breached an implied warranty of workmanlike construction of the new home located at 3121 Lorton Avenue, Davenport, Iowa, 52807. Defendants seek recovery for damages resulting from Plaintiff's alleged breach of the implied warranty of workmanlike construction. Plaintiff denies it breached the implied warranty of workmanlike construction and denies Defendants' damages are a result of the alleged breach of the implied warranty of workmanlike construction.

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. 1: 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 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.

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 on one side or the other.

Plaintiffs must prove all of the following propositions:

1) Defendants breached the written Residential Construction Agreement; 2) the amount of any damage Defendants have caused Plaintiff by their breach of the written Residential Construction Agreement;

or in the alternative, 1) Defendants were unjustly enriched; 2) the amount by which the Defendants were unjustly enriched.

Defendants must prove all of the following propositions:

1) Plaintiff breached the written Residential Construction Agreement; 2) the amount of any damage Plaintiff has caused Defendants by its breach of the written Residential Construction Agreement;

1) Plaintiff breached the express warranty; 2) the amount of damage Plaintiff has caused Defendants by its breach of the express warranty;

1) Plaintiff breached the implied warranty of workmanlike construction; 2) the amount of damage Plaintiff has caused Defendants by its breach of the implied warranty of workmanlike construction.

INSTRUCTION NO. 3: 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 (i.e. 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 the courtroom.

INSTRUCTION NO. 4: Certain testimony has been played by a video into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing or video. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 5: Counsel has stipulated to the following:

STIPULATION: The parties agree to the admission of Plaintiff's Exhibit 14 (listed as Punch List 3) as a true and accurate copy of a repair list sent to the contractor from the homeowners on January 19, 2018. The parties do not stipulate as to what items were completed or not completed on this list.

STIPULATION: The parties agree the Contractor did not return to the subject property for repairs or otherwise after January 19, 2018.

STIPULATION: The parties agree to the admission of Plaintiffs' Exhibits 17-21 as true and accurate copies of the inspection reports issued by the City of Davenport.

Consider stipulated testimony as if it had been given in court.

INSTRUCTION NO. 6 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 entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 7: 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. 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 may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

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 maps or Google Earth or any other program or device to search for or to 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 Court. This includes using the Internet to research events or people referenced in the trial.

This case must be tried on evidenced 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 don't 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.

INSTRUCTION NO. 10 : Plaintiffs, H.L. Construction, LLC, aka H.L. Homebuilder, LLC, and Quad City Rooter & Plumbing, Inc., must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. Plaintiffs, H.L. Construction, LLC, aka H.L. Homebuilder, LLC, and Quad City Rooter & Plumbing, Inc., have done what the contract requires
6. Defendants, Jonathan Uhl and Justine Uhl, have breached the contract.
7. The amount of any damage Defendants have caused to Plaintiffs.
8. If the Plaintiffs have failed to prove any of these propositions, the Plaintiffs are not entitled to damages.
9. If the Plaintiffs have proved all of these propositions, then you will consider the defenses of Defendants.

INSTRUCTION NO. 11: Defendants, Jonathan Uhl and Justine Uhl, must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. Jonathan Uhl and Justine Uhl have done what the contract requires
6. Plaintiff, H.L. Construction, LLC, aka H.L. Homebuilder, LLC, has breached the contract.
7. The amount of any damage Plaintiff has caused to Defendants.
8. If the Defendants have failed to prove any of these propositions, the Defendants are not entitled to damages.
9. If the Defendants have proved all of these propositions, then you will consider the defenses of Plaintiff.

INSTRUCTION NO. 12: A person is capable of making a contract unless the person lacked sufficient mental capacity to understand it.

INSTRUCTION NO. 13: 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. 14 : "Consideration" is either a benefit given or to be given to the person who makes the promise a detriment experienced or to be experienced by the person to whom the promise is made. Where the contract provides for mutual promises, each promise is a consideration for the other promise.

INSTRUCTION NO. 15: The measure of damages for breach of a contract is an amount that would place the non-breaching party in as good a position as they would have enjoyed if the contract had been performed.

INSTRUCTION NO. 16: A breach of the contract occurs when a party fails to perform a term of the contract.

INSTRUCTION NO. 17: 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. 18 When a person agrees to do something for a specified consideration to be received after full performance, they are not entitled to any part of the consideration until they have performed as agreed unless full performance has been excused, waived, prevented or delayed by the act of the other party.

However, a plaintiff who has not fully performed under the terms of the contract may still recover some amount if the failure to render performance due at an earlier time was not material. In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

1. The extent to which defendant will be deprived of the benefit which defendant reasonably expected.
2. The extent to which defendant can be adequately compensated for the part of that benefit of which defendant will be deprived.
3. The extent to which plaintiff will suffer forfeiture.
4. The likelihood that plaintiff will cure the failure, taking account of all the circumstances including any reasonable assurances.
5. The extent to which the behavior of the plaintiff is in line with standards of good faith and fair dealing.

INSTRUCTION NO. 19 : 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 the 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. 20: Defendants claim performance was excused because of:
waiver of performance.

If the defendant has proven waiver of performance, then you shall find for the defendants.
If the defendants have failed to prove waiver of performance, then you shall decide whether the
plaintiff is entitled to recover damages.

INSTRUCTION NO. 21: Damages for breach of contract are limited to those injuries which may reasonably be considered as arising naturally from the breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of the parties, at the time of contracting, as a probable result of the breach.

INSTRUCTION NO. 22: The purpose of a damage suit is compensation; the goal is to place the injured party in as favorable position as though no wrong had occurred. Damages are limited to the actual loss.

INSTRUCTION NO. 23: The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

INSTRUCTION NO. 24: To prove unjust enrichment, in the alternative, Plaintiffs must prove the following propositions:

1. Plaintiffs conferred a benefit to Defendants;
2. It would be unjust to allow Defendants to retain the benefit under the circumstances; and
3. The amount of damages.

If Plaintiffs have failed to prove any of the propositions above, your verdict will be for the Defendants. If Plaintiffs have proven each of the propositions above, your verdict will be for the Plaintiffs.

A person confers a benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or choses in action, performs services beneficial to or at the request of the other, satisfied a debt or a duty of the other, or in any way adds to the other's security or advantage.

INSTRUCTION NO. 25: In order for you to find for Defendants' claim for breach of an express warranty, they must prove the following propositions:

1. Plaintiff sold the home and expressly warranted as part of the Residential Construction Agreement that the home would be constructed in a workmanlike manner and in accordance with the expressed warranty provided.
2. Defendants made the purchase relying on the expressed warranty.
3. The home did not conform to the express warranty.
4. The breach of the express warranty was the proximate cause of the Defendants' damages.
5. The amount of the damages.

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

INSTRUCTION NO. 26: In defective construction cases, damages may include, cost of construction and completion in accordance with the contract, cost of repair of defects, or loss of rentals.

INSTRUCTION NO. 27: In the sale of a home, there is an implied warranty that the home has been constructed in a reasonably good and workmanlike manner.

Defendants claim Plaintiff breached this implied warranty.

INSTRUCTION NO. 28: Defendants also make the claim that Plaintiff breached an implied warranty to construct the home in a reasonably good and workmanlike manner. In order for the Defendants to recover under this claim they must prove all of the following propositions by a preponderance of the evidence:

1. The property located at 3121 Lorton Avenue, Davenport, Iowa, 52807 was constructed to be occupied as a residential home.
2. The house was purchased from Plaintiff, a builder-vendor, who constructed it for the purpose of sale;
3. The house was not constructed in a good and workmanlike manner;
4. Defendants were unaware of the defects; and
5. Defendants suffered damages.

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

INSTRUCTION NO. 29: Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof, or what your verdict should be.

INSTRUCTION NO. 30 : 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 item of damage. The amounts, if any, you find for each item of damage shall be separate and independent.

INSTRUCTION NO. 31: 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 you item of damage.

INSTRUCTION NO. 32: 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. 33: 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. 34 I have provided you with two verdict forms. Each should be considered independently. You shall not offset damages, if any you find under Verdict Form One (1) against damages, if any you find under Verdict Form Two (2), likewise you shall not offset damages, if any you find under Verdict Form Two (2) against damages, if any you find under Verdict Form One (1).

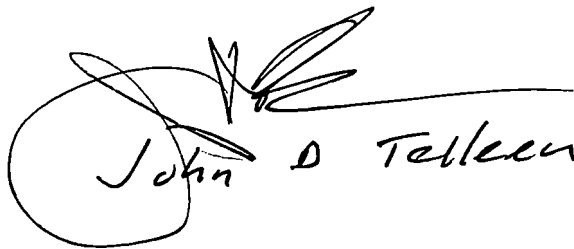
If any offset is appropriate or required, it will be made by the court after your verdict has been rendered.

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I am giving you two verdict forms and 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 12 o'clock 20.m. excluding meals or recesses outside your jury room, then it is necessary that only six of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all six jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Court Attendant.



John D Telleen


INSTRUCTION NO. 36

Members of the Jury:

You reported today at 10:00 a.m., and it is now 4:40 p.m. Further, you have been deliberating the issues since approximately 12:22 p.m. Because of the lateness of the hour and the length of today's service, the Court has determined that you should be allowed to separate temporarily overnight.

While temporarily separated, you should not permit anyone, including fellow jurors, to speak to or communicate with you about this case or reveal the state of your deliberations to anyone. You should avoid spoken or written publicity about the case in all radio, television, or newspaper comments or accounts of this case.

You shall report back to your jury room at 8:30 a.m., Monday, August 2, 2021, at which time you will continue your deliberations.



JOHN D. TELLEEN,
Judge of the Seventh Judicial
District of Iowa