

IOWA DISTRICT COURT IN AND FOR WAYNE COUNTY

PAUL THORNTON, Paul Thornton, vs. PAUL W. EVITT, MARY ANN EVITT AND VERLE W. NORRIS Defendants.	CASE NO. EQCV023937 JURY INSTRUCTIONS AND VERDICT FORM JUDGE COLEMAN J. MCALLISTER
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MEMBERS OF THE JURY:

This is a civil action that arises out of the events connected to a real estate purchase agreement that was signed by Plaintiff Paul Thornton and Defendants Paul and Mary Ann Evitt in 2018.

In this lawsuit, Paul Thornton claims that Paul and Mary Ann Evitt are liable to him for damages for breach of contract and conversion. Paul and Mary Evitt deny all of the claims made by Paul Thornton. Additionally, Paul and Mary Evitt have asserted the defense of forfeiture.

Paul Thornton also claims that Defendant Verle Norris is liable to him for damages for breach of fiduciary duty and conversion. Verle Norris denies all of the claims made by Paul Thornton. Additionally, Verle Norris has asserted the defense of forfeiture and defense of failure to mitigate damages.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I 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 these instructions together with any verbal instructions I gave you during the trial because no one instruction includes all of the applicable law.

The order in which I give you 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. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or 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.

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 or by deposition.

2. Exhibits received by the court.
3. Stipulations which are agreements between the parties.
4. Any other matter admitted into evidence.

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

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 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. 5

You have heard evidence claiming that a party made statements before this trial while under oath and/or while not 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 party had made it under oath during the trial.

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

INSTRUCTION NO. 6

The Court has ruled that a witness was not required to testify about statements protected by the attorney client privilege.

Do not make any assumptions about what any such witness would have said or speculate about whether the testimony would have been favorable to a particular party.

INSTRUCTION NO. 7

Paul Thornton's Breach of Contract Claim Against Paul and Mary Ann Evitt

Paul Thornton claims that Paul and Mary Ann Evitt breached a contract. In order to recover on this claim, Paul Thornton 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. Paul Thornton has done what the contract requires.
6. Paul and Mary Ann Evitt have breached the contract.
7. The amount of any damage that Paul and Mary Ann Evitt have caused.

If Paul Thornton has failed to prove any one of these propositions, Paul Thornton is not entitled to damages. If Paul Thornton has proved all of these propositions, then you must consider the defense of forfeiture as explained in Instruction No. 18.

INSTRUCTION NO. 8

A person is capable of making a contract unless the person lacked sufficient mental capacity to understand it.

INSTRUCTION NO. 9

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. 10

"Consideration" is either a benefit given or to be given to the person who makes the promise or 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.

Consideration is implied in in any contract that is in writing and signed by the parties to be bound by the contract.

INSTRUCTION NO. 11

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. 12

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

Every contract or agreement contains an implied promise of good faith and fair dealing. This implied promise means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract. Good faith means honesty of purpose without any intention to mislead or take unfair advantage of another. Generally speaking, it means being faithful to one's duty or obligations. However, the implied promise of good faith and fair dealing cannot create obligations that are inconsistent with the terms of the contract.

INSTRUCTION NO. 13

Paul Thornton's Conversion Claim Against Paul and Mary Ann Evitt

Conversion is the intentional and wrongful interference with the property rights of another. In this case, Paul Thornton contends that Defendants Paul and Mary Ann Evitt are liable for conversion in regard to the \$175,000 that Paul Thornton wired to Verle Norris pursuant to the real estate contract. In order to succeed under this claim, Paul Thornton must prove all of the following propositions:

1. Paul Thornton owned the \$175,000 or had a right to possession of the \$175,000 greater than that of Paul and Mary Ann Evitt.
2. Paul and Mary Ann Evitt exercised dominion or control over the \$175,000 inconsistent with the ownership or right of possession by Paul Thornton.
3. The exercise of dominion or control over the \$175,000 by Paul and Mary Ann Evitt caused damages to Paul Thornton. Paul and Mary Ann Evitt's exercise of dominion or control is a "cause" of damage when the damage would not have happened except for the conduct.
4. The amount of damages.

If you find Paul Thornton has failed to prove any one of these propositions, then he is not entitled to damages. If Paul Thornton has proved all of these propositions,

then you must consider the defense of forfeiture as explained in Instruction No. 18.

INSTRUCTION NO. 14

Paul Thornton's Conversion Claim Against Verle Norris

Conversion is the intentional and wrongful interference with the property rights of another. In this case, Paul Thornton contends that Verle Norris is liable for conversion in regard to the \$175,000 that Paul Thornton wired to Verle Norris pursuant to the contract he entered into with Paul and Mary Ann Evitt. In order to succeed under this claim, Paul Thornton must prove all of the following propositions:

1. Paul Thornton owned the \$175,000 or had a right to possession of the \$175,000 greater than that of Verle Norris.
2. Verle Norris exercised dominion or control over the \$175,000 inconsistent with the ownership or right of possession by Paul Thornton.
3. The exercise of dominion or control over the \$175,000 by Verle Norris caused damages to Paul Thornton. Verle Norris' exercise of dominion or control is a "cause" of damage when the damage would not have happened except for the conduct.
4. The amount of damages.

If you find Paul Thornton has failed to prove any one of these propositions, then he is not entitled to damages. If Paul Thornton has proved all of these propositions, then you must consider the defense of forfeiture as explained in Instruction No. 18 and the defense of failure to mitigate damages as explained in Instruction No. 20.

INSTRUCTION NO. 15

In regard to the claims of conversion set forth in Instructions No. 13 and No. 14, particularly Proposition No. 2, a conversion may be committed when a person takes property from the possession of another without the other's consent; a person obtains possession of property from another by fraud or duress; or when a person

uses property that is properly in their possession or control in a manner that is unauthorized. The motives of Defendants Paul Evitt, Mary Ann Evitt and Verle Norris are irrelevant; it is not necessary for Paul Thornton to show that the Defendants acted maliciously or with an evil motive to find them liable for conversion.

Although motive is irrelevant, the exercise of control over the \$175,000 must be intentional and wrongful which so seriously interferes with the right of Paul Thornton to control the \$175,000 that Defendants Paul Evitt, Mary Ann Evitt and/or Defendant Verle Norris may justly be required to pay the full value.

In determining whether the interference with the Paul Thornton's right was sufficiently serious to create liability for conversion, you may consider the following factors:

- A. The extent and duration of Defendant Paul Evitt, Mary Ann Evitt and/or Defendant Verle Norris' exercise of dominion or control over the \$175,000.
- B. Defendant Paul Evitt, Mary Ann Evitt and/or Defendant Verle Norris' intent to assert a right inconsistent with the right of control of Paul Thornton.
- C. Defendant Paul Evitt, Mary Ann Evitt and/or Defendant Verle Norris' good faith.
- D. The extent and duration of the resulting interference with Paul Thornton's right of control.
- E. Any harm done to the property.
- F. The inconvenience and expense caused to Paul Thornton.
- G. Any other fact or circumstance you find bears on this issue.

INSTRUCTION NO. 16**Paul Thornton's Breach of Fiduciary Duty Claim Against Verle Norris**

Paul Thornton has asserted a claim for breach of fiduciary duty against Verle Norris. To succeed on this claim, Paul Thornton must prove all of the following propositions:

1. A fiduciary relationship existed between Paul Thornton and Verle Norris.
2. During the existence of the fiduciary relationship, Verle Norris breached a fiduciary duty.
3. The breach of the fiduciary duty was a cause of damage to Paul Thornton.
4. The amount of damages.

If you find Paul Thornton has failed to prove any one of these propositions, then he is not entitled to damages. If Paul Thornton has proved all of these propositions, then you must consider the defense of forfeiture as explained in Instruction No. 18 and the defense of failure to mitigate damages as explained in Instruction No. 20.

INSTRUCTION NO. 17

Concerning proposition No. 1 of Instruction No. 16, a fiduciary relationship is a relationship of trust and confidence on a subject between two persons. One of the persons is under a duty to act for or give advice to the other on that subject. Confidence is placed on one side and domination and influence result on the other.

Circumstances that indicate the existence of a fiduciary relationship include the acting of one person for another, the having and exercising of influence over one person by another, the placing of confidence by one person in another, the dominance of one person by another, the inequality of the parties, and the dependence of one person upon another. None of these circumstances is more important than another.

It is for you to determine from the evidence whether a fiduciary relationship existed between the parties.

INSTRUCTION NO. 18

Paul and Mary Ann Evitt' and Verle Norris' Defense of Forfeiture

Paul and Mary Ann Evitt and Verle Norris claim Paul Thornton failed to timely perform the contract and as a result they were entitled to forfeit the contract. To succeed on this claim, Paul and Mary Ann Evitt must prove all of the following propositions:

1. Paul Thornton breached the contract by failing to pay the balance of the purchase price of \$64,828.05.
2. Prior to initiating forfeiture proceedings, Paul and Mary Ann Evitt obtained a mediation release.
3. Paul and Mary Ann Evitt caused to be served a written notice of forfeiture on Paul Thornton by either personal service or publication.
4. The written notice served on Paul Thornton reasonably identified the contract document and the real estate covered by it.
5. The written notice served on Paul Thornton specified the terms of the contract with which Paul Thornton had failed to timely comply.
6. The written notice served on Paul Thornton stated that unless within thirty days after the completed service of the notice Paul Thornton performed the terms in default and paid the reasonable costs of serving the notice, the contract would be forfeited.
7. The written notice served on Paul Thornton specified whether any attorney fees were claimed by Defendants Paul and Mary Evitts and, if so, that payment of the attorney fees were not required to comply with the notice and prevent

forfeiture.

8. Paul Thornton failed to perform the breached terms specified in the notice within 30 days of completed service of the notice of forfeiture.

If you find that Paul and Mary Ann Evitt have proved all of these propositions then they have proven the defense of forfeiture and Paul Thornton cannot recover damages on his claims for either breach of contract or conversion. If Paul and Mary Ann Evitt have failed to prove this defense, Paul Thornton is entitled to recover damages in some amount.

If you find that Verle Norris has proved all of these propositions then he has proven the defense of forfeiture and Paul Thornton cannot recover damages on his claims for either breach of fiduciary duty or conversion. If Verle Norris has failed to prove this defense, you shall next consider the defense of failure to mitigate damages explained in Instruction No. 20.

INSTRUCTION NO. 19

Service by publication requires publication of the document to be served once each week for three consecutive weeks in a newspaper of general circulation published in Wayne County. Service by publication is deemed completed on the last day of the last publication.

INSTRUCTION NO. 20

Verle Norris claims Paul Thornton failed to mitigate damages. To succeed on this claim, Verle Norris must prove all of the following:

1. There was something Paul Thornton could do to mitigate his damages.
2. Requiring Paul Thornton to do so was reasonable under the circumstances.

3. Paul Thornton acted unreasonably by failing to undertake the mitigating activity.

4. Paul Thornton's failure to undertake the mitigating activity caused an identifiable portion of his damages.

If Verle Norris has proved all of these numbered propositions, then you shall reduce Paul Thornton's damages by the amount of damages that Verle Norris has proved were caused by Paul Thornton's failure to mitigate his damages. If Verle Norris has failed to prove this defense, Paul Thornton is entitled to recover damages in some amount.

INSTRUCTION NO. 21

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. 22

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. 23

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. 24

Sometimes during deliberations, an individual juror or the jury as a whole may have a question about the evidence presented in the trial or the law in these instructions. Please understand that most questions can be answered by a close review of these instructions. However, if during your deliberations you have a question you want to ask the Court, the question should be presented to the court attendant by the person you have selected as foreperson. The question must be put in writing with the foreperson signing the written question, and including, in writing, the time and date of the question.

Once the Court receives such a question, the Court is obligated to advise and discuss the question with the attorneys and parties involved in the case. Therefore, you must understand that some time may elapse prior to the Court responding to such a question. You must keep the question and any written response you receive from the Court and return them, unaltered, to the Court with any verdict.

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

INSTRUCTION NO. 25

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 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 or 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.

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. 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.


INSTRUCTION NO. 26

I am giving you one verdict form and five special interrogatories. 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 foreperson.

After deliberating six (6) hours from 4:35 o'clock P.m., excluding meals or recesses outside your jury room, then it is necessary that only seven (7) of you agree to the verdict. In that case, the verdict must be signed by all seven (7) jurors.

When you have agreed upon the verdict, and appropriately signed it, tell the Court attendant.

Submitted this 30th day of November, 2023 at 4:35 P.m.


JUDGE COLEMAN J. McALLISTER