

IN THE CIRCUIT COURT FOR THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION 09

CASE NO.: CACE

,
Plaintiff,
vs.

,
Defendant

_____ /

JURY INSTRUCTIONS

INTRODUCTORY INSTRUCTION

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you, to facts as you find them from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, and all facts that may be admitted or agreed to by the parties.

In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case. But you should not speculate on any matters outside the evidence.

BELIEVABILITY OF WITNESSES

a. General Considerations

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

b. Expert Witnesses

You have heard opinion testimony from a person referred to as an expert witness. Some of the testimony before you was in the form of opinions about certain technical subjects

You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

GREATER WEIGHT (PREPONDERANCE) OF
EVIDENCE AND BURDEN OF PROOF

If the greater weight of the evidence does not support the claims of PLAINTIFF, then your verdict should be for the Defendant.

GREATER WEIGHT OF EVIDENCE DEFINED

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case.

CONVENTIONAL CHARGES ON CLAIM

The issues for your consideration on the claim of PLAINTIFF against the Defendant are,

1. Whether Defendant owed a duty with respect to Plaintiff and Plaintiff's property.
2. Whether Defendant breached any duty it owed to Plaintiff.
3. Whether any breach of duty by Defendant resulted in damage to Plaintiff.
4. Whether Defendant performed any repairs to the property of Plaintiff within a reasonable degree of care of a marine air conditioning provider.
5. Whether any failure(s) by Defendant to perform repairs within a reasonable degree of care of a marine air conditioning provider caused or contributed to any damage or injury sustained by Plaintiff.
6. Whether Defendant made false material representations to Plaintiff.
7. Whether Plaintiff justifiably relied upon any false material representations made by Defendant.
8. Whether Plaintiff was harmed by any justified reliance upon false representations made by Defendant.

9. Whether Domestic Corporation owed a duty with respect to Plaintiff and Plaintiff's property.
10. Whether Domestic Corporation breached any duty it owed to Plaintiff.
11. Whether any breach of duty by Domestic Corporation resulted in damage to Plaintiff.
12. Whether Beard Marine owed a duty with respect to Plaintiff and Plaintiff's property.
13. Whether Beard Marine breached any duty it owed to Plaintiff.
14. Whether any breach of duty by Beard Marine resulted in damage to Plaintiff.

GREATER WEIGHT (PREPONDERANCE) OF
EVIDENCE AND BURDEN OF PROOF

If the greater weight of the evidence does not support the claim of PLAINTIFF, against the Defendant then your verdict should be in favor of the Defendant and against the Plaintiff. However if the greater weight of the evidence does support the claim of the Plaintiff against the Defendant then your verdict should be for the Plaintiff and against the Defendant.

NEGLIGENCE

Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either in doing something that a reasonably careful person would not do under like circumstances or in failing to do something that a reasonably careful person would do under like circumstances.

CAUSE AND FORESEEABILITY

A person is liable for negligence only if the injuries to another were a reasonably foreseeable consequence of the negligence. In the context of legal cause, “foreseeability” means that a reasonable person would expect that a dangerous condition created by a person would likely lead to some injury. An injury may be reasonably foreseeable even though a person could not have known the exact series of event that would lead to the injury. A cause is foreseeable if the injury results in an ordinary, natural, and logical sequence from the negligent conduct.

LEGAL CAUSE

Negligence is a legal cause of injury if it directly and in natural and continuous sequence, produces or contributes substantially to producing such injury so that it can reasonably be said that, but for the negligence, the injury would not have occurred.

ISSUES ON PLAINTIFF'S CLAIM — NEGLIGENT MISREPRESENTATION

The next issue for you to decide on Plaintiff's claim for negligent misrepresentation are:

First, whether Defendant made a statement concerning a material fact that it believed to be true but which was in fact false;

Second, whether Defendant was negligent in making the statement because it should have known the statement was false;

Third, whether in making the statement, Defendant intended or expected that Plaintiff would rely on the statement;

Fourth, whether Plaintiff justifiably relied on the false statement; and, if so,

Fifth, whether the false statement was a legal cause of loss damage to Plaintiff.

LEGAL CAUSE

a. Legal cause generally:

Misrepresentation of a material fact is a legal cause of loss or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss injury or damage, so that it can reasonably be said that, but for the misrepresentation, the loss or damage would not have occurred.

b. Concurring cause:

In order to be regarded as a legal cause of loss or damage misrepresentation of a material fact need not be the only cause. Misrepresentation of a material fact may be a legal cause of loss injury or damage even though it operates in combination with some other cause if the misrepresentation contributes substantially to producing such loss or damage.

OTHER PROFESSIONAL NEGLIGENCE

Negligence is the failure to use reasonable care. Reasonable care on the part of a marine air conditioning provider is the care that a reasonably careful marine air conditioning provider would use under like circumstances. Negligence is doing something that a reasonably careful marine air conditioning provider would not do under like circumstances or failing to do something that a reasonably careful marine air conditioning provider would do under like circumstances.

DAMAGES

If your verdict is for the defendant you will not consider the matter of damages. But if you find for the plaintiff you should determine and write on the verdict form in dollars the total amount of loss which the greater weight of the evidence shows it sustained as a result of the incident complained of. You should consider the following elements:

- A. Any amount of damage sustained to property belonging to the Plaintiff.
- B. Any additional injuries or damages sustained by Plaintiff as a direct result of Defendant's negligence or breach of warranty of workmanlike performance or negligent misrepresentations.

In determining the total amount of damages, you should not make any reduction because of the negligence, if any, of Plaintiff or any other entity. The court will enter a judgment based on your verdict and, if you find that Plaintiff or any other entity was negligent in any degree, the Court in entering judgment will reduce the total amount of damages by the percentage of negligence which you find is chargeable to Plaintiff or that other entity.

CLOSING INSTRUCTIONS

Members of the jury, you have now heard all the evidence, my instructions on the law that you must apply in reaching your verdict and the closing arguments of the attorneys. You will shortly retire to the jury room to decide this case. Before you do so, I have a few last instructions for you.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You will have in the jury room all of the evidence that was received during the trial. In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or any other reference materials. Do not investigate the case or conduct any experiments. Do not visit or view the scene of any event involved in this case or look at maps or pictures on the Internet. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial.

You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. These communications rules apply until I discharge you at the end of the case.

If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

Any notes you have taken during the trial may be taken to the jury room for use during your discussions. Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. Your notes are not a substitute for your own memory or that of other

jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial. At the conclusion of the trial, the bailiff will collect all of your notes and immediately destroy them. No one will ever read your notes.

In reaching your verdict, do not let bias, sympathy, prejudice, public opinion, or any other sentiment for or against any party to influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you.

Reaching a verdict is exclusively your job. I cannot participate in that decision in any way and you should not guess what I think your verdict should be from something I may have said or done. You should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you. Pay careful attention to all the instructions that I gave you, for that is the law that you must follow. You will have a copy of my instructions with you when you go to the jury room to deliberate. All the instructions are important, and you must consider all of them together. There are no other laws that apply to this case, and even if you do not agree with these laws, you must use them in reaching your decision in this case.

When you go to the jury room, the first thing you should do is choose a presiding juror to act as a foreperson during your deliberations. The foreperson should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. You must consider each question separately. Please answer the questions in the order they appear. After you answer a question, the form tells you what to do next. I will now read the form to you:

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you. When you have agreed on your verdict, your foreperson must write the date and sign it at the bottom and return the verdict to the bailiff. If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split or the reason for the communication.

You may now retire to decide your verdict.