

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

TOM OBERREUTER d/b/a TNO
LOGISTICS and KENNY LOGSDON,

Plaintiffs,

vs.

REINHART FOODSERVICE, INC.,

Defendant.

No. C03-110 LRR

FINAL JURY INSTRUCTIONS

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

In considering these instructions, the order in which they are given is not important.

INSTRUCTION NO. _____

Neither in these instructions nor in any ruling, action, or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdicts should be.

INSTRUCTION NO. _____

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. _____

In these instructions you are told that your verdicts depend on whether you find certain facts have been proven. The burden of proving a fact is upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved. The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. _____

In Count 1 of the Complaint, Tom Oberreuter d/b/a TNO Logistics claims Reinhart Foodservice breached a contract with him.

To prevail on the breach-of-contract claim, Oberreuter d/b/a TNO Logistics must prove:

1. The existence of a contract between Oberreuter d/b/a TNO Logistics and Reinhart Foodservice.
2. The terms of the contract.
3. Oberreuter d/b/a TNO Logistics has done what the contract requires.
4. Reinhart Foodservice breached the contract.
5. The amount of any damage to Oberreuter d/b/a TNO Logistics caused by Reinhart Foodservice's breach of the contract.

If Oberreuter d/b/a TNO Logistics has failed to prove all of the above elements by the greater weight of the evidence, then your verdict on Oberreuter d/b/a TNO Logistics' breach-of-contract claim must be for Reinhart Foodservice. However, if Oberreuter d/b/a TNO Logistics has proved all of these elements by the greater weight of the evidence, then Oberreuter d/b/a TNO Logistics is entitled to damages in some amount from Reinhart Foodservice for breach of contract, unless Reinhart Foodservice prevails on its affirmative defenses.

INSTRUCTION NO. _____

In Count 1 of the Complaint, Kenny Logsdon claims Reinhart Foodservice breached a contract with him.

To prevail on the breach-of-contract claim, Logsdon must prove:

1. The existence of a contract between Logsdon and Reinhart Foodservice.
2. The terms of the contract.
3. Logsdon has done what the contract requires.
4. Reinhart Foodservice breached the contract.
5. The amount of any damage to Logsdon caused by Reinhart Foodservice's breach of the contract.

If Logsdon has failed to prove all of the above elements by the greater weight of the evidence, then your verdict on Logsdon's breach-of-contract claim must be for Reinhart Foodservice. However, if Logsdon has proved all of these elements by the greater weight of the evidence, then Logsdon is entitled to damages in some amount from Reinhart Foodservice for breach of contract, unless Reinhart Foodservice prevails on its affirmative defenses.

INSTRUCTION NO. _____

Logsdon alternatively claims that he was an intended third-party beneficiary of a contract between Oberreuter d/b/a TNO Logistics and Reinhart Foodservice and that Reinhart Foodservice breached that contract. Logsdon can prevail on a third-party beneficiary claim for breach of contract against Reinhart Foodservice if Logsdon proves:

1. The existence of a contract between Oberreuter d/b/a TNO Logistics and Reinhart Foodservice.
2. The terms of the contract.
3. The performance promised by the contract would have been of financial benefit to Logsdon.
4. The terms of the contract are so expressed as to give Reinhart Foodservice reason to know that financial benefit to Logsdon was contemplated by Oberreuter d/b/a TNO Logistics.
5. Oberreuter d/b/a TNO Logistics has done what the contract requires.
6. Reinhart Foodservice breached the contract.
7. The amount of any damage to Logsdon caused by Reinhart Foodservice's breach of the contract.

If Logsdon has failed to prove all of the above elements by the greater weight of the evidence, then your verdict on Logsdon's third-party beneficiary breach-of-contract claim must be for Reinhart Foodservice. However, if Logsdon has proved all of these elements by the greater weight of the evidence, then Logsdon is entitled to damages in some amount from Reinhart Foodservice for breach of contract, unless Reinhart Foodservice prevails on its affirmative defenses.

INSTRUCTION NO. _____

A contract is an agreement between two or more persons to do or not to do something.

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.

Oral contracts are enforceable.

INSTRUCTION NO. _____

In determining the terms of a 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. Where general and specific terms in the contract refer to the same subject, the specific terms control.

INSTRUCTION NO. _____

A breach of the contract occurs when a party fails to perform one or more terms of the contract.

INSTRUCTION NO. _____

Performance of the terms of a contract is excused where one party clearly rejects the contract by giving notice to the other that they will not perform.

INSTRUCTION NO. _____

Unless the parties otherwise agree, business relationships are presumed to be “at-will.”

In an “at-will” business relationship, the entity hiring the independent contractor can lawfully discharge an independent contractor and terminate a business relationship at any time for any reason or no reason at all and, in doing so, does not breach the “at-will” contract.

A contract between a hiring entity and an independent contractor is presumed to be “at-will” if, by its terms, it is of indefinite duration – that is, it does not establish a definite or fixed time period. However, the presumption may be rebutted. Where there is a definite limitation upon the termination of the business relationship in the contract, the business relationship is no longer “at-will.” A typical example of such a limitation is where the parties agree that discharge will occur only under certain conditions.

INSTRUCTION NO. _____

The measure of damages for breach of a contract is an amount that will place a plaintiff in as good a position as if the breach had not occurred.

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

The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given only for your guidance in the event that you should find that the Plaintiffs are entitled to damages in accord with other instructions.

In arriving at an amount of damages, you cannot establish a figure by taking down the estimate of each juror as to damages and agreeing in advance that the average of those estimates shall be your award of damages. Rather, you must use your sound judgment based upon an impartial consideration of the evidence.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture. You must not award damages by way of punishment or through sympathy. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against any of the parties. The amount of damages you award must not exceed the amount caused by the defendant as proved by the evidence.

The amount of damages awarded to one party shall not be included in any amount awarded to another party.

INSTRUCTION NO. _____

You have heard evidence the parties agreed to renegotiate when fuel prices rose above \$1.60 per gallon and that fuel prices rose above \$1.60 per gallon on February 10, 2003. If you find there existed a contract between Reinhart Foodservice and Oberreuter d/b/a TNO Logistics and/or between Reinhart Foodservice and Logsdon, you must decide whether this renegotiation term was an unenforceable “agreement to agree” or an enforceable “escalator clause.”

To help you make this determination, you are instructed that an “agreement to agree” to enter into a contract is of no effect unless all of the terms and conditions of the contract are agreed on and nothing is left to future negotiations. You are further instructed that an “escalator clause” is an enforceable contract term which gives the parties the right to increase the contract price in the future, usually dependent upon an increase in supply or production costs. In making your determination, you must construe the renegotiation term in a manner which carries out the apparent intention of the parties, generally giving the words used their ordinary meaning.

If you find the renegotiation term is an unenforceable “agreement to agree,” Oberreuter d/b/a TNO Logistics and/ or Logsdon are not entitled to recover any damages they may have incurred after February 10, 2003. If you find the renegotiation term is an enforceable “escalator clause,” Oberreuter d/b/a TNO Logistics and/ or Logsdon may be entitled to recover damages they may have incurred after February 10, 2003.

INSTRUCTION NO. _____

Reinhart Foodservice asserts, as an affirmative defense to the claims of Oberreuter d/b/a TNO Logistics and Logsdon, that Oberreuter d/b/a TNO Logistics and/or Logsdon failed to mitigate their damages.

Because Oberreuter d/b/a TNO Logistics and Logsdon seek damages for wrongful acts of Reinhart Foodservice, Oberreuter d/b/a TNO Logistics and Logsdon each are required to minimize their damages. This means that Oberreuter d/b/a TNO Logistics and Logsdon each must exercise all reasonable diligence and take advantage of any reasonable opportunity to lessen or minimize the damages caused by Reinhart Foodservice's actions, and to avoid losses that were reasonably avoidable.

So, if you find that Oberreuter d/b/a TNO Logistics failed to avoid damages that were reasonably avoidable, then you should reduce the amount of damages awarded to him by the amount that he could have reasonably avoided. Similarly, if you find that Logsdon failed to avoid damages that were reasonably avoidable, then you should reduce the amount of damages awarded to him by the amount that he could have reasonably avoided.

INSTRUCTION NO. _____

The fact that a plaintiff or defendant 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. _____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be delivered to the Court Security Officer for destruction.

INSTRUCTION NO. _____

In conducting your deliberations and returning your verdicts, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

(CONTINUED)

INSTRUCTION NO. _____ (Cont'd.)

Fourth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdicts should be - that is entirely for you to decide.

Finally, I am giving you verdict forms. The verdict forms are simply the written notice of the decisions that you reach in this case. Your verdicts must be unanimous. You will take the verdict forms to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in each form, and sign and date it. All jurors also shall sign the verdict forms indicating that the verdicts are unanimous. The foreperson must bring the signed verdict forms to the courtroom when it is time to announce your verdicts. When you have reached verdicts, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this _____ day of March, 2005.

LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA