

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MARY THOME,

Plaintiff,

vs.

THE SAYER LAW GROUP, P.C.,

Defendant.

No. 20-CV-3058-CJW-KEM

JURY INSTRUCTIONS

Members of the Jury:

In the next few moments, I am going to give you instructions about this case and about your duties as jurors. I will also give you additional instructions at a later time. Unless I specifically tell you otherwise, all instructions—both those I give you now and those I give you later—are equally binding on you and must be followed.

The instructions I am about to give you now are in writing and will be available to you in the jury room. In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 1

This is a civil case brought by plaintiff Mary Thome against defendant The Sayer Law Group. Plaintiff claims that defendant's January 27, 2020, debt collection letter violated the Fair Debt Collection Practices Act in multiple ways, plaintiff relied on that letter, and plaintiff was injured by her reliance. Defendant claims plaintiff did not rely on its letter and that, even if plaintiff did rely, plaintiff was not injured by her reliance.

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations and experiences. After you have decided what the facts are, you will have to apply those facts to the law that I give you in these and in my other instructions. That is how you will reach your verdict. Only you will decide what the facts are. On the other hand, you must follow my instructions, whether you agree with them or not. You have taken an oath to follow the law that I give you in my instructions.

Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

Nothing I say or do during this trial is meant to suggest what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 2

During recesses, do not discuss this case among yourselves or with anyone else, including your family and friends. Do not allow anyone to discuss the case with you or within your hearing. "Do not discuss" also means do not e-mail, send text messages, blog or engage in any other form of written, oral or electronic communication about this case.

You must decide this case only from the evidence received by the court here in the courtroom and the instructions on the law that I give you. Do not read any newspaper or other written account, watch any televised account or streamed video account, or listen to any streamed internet or radio program on the subject of this trial. Do not conduct any Internet research or consult with any other sources about this case, the people involved in the case, or its general subject matter. You must keep your mind open and free of outside information. Only in this way will you be able to decide the case fairly based solely on the evidence received in court and my instructions on the law. If you decide this case on anything else, you will have done an injustice. It is very important that you follow these instructions.

I may not repeat these things to you before every recess, but keep them in mind until you are discharged.

INSTRUCTION NO. 3

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

INSTRUCTION NO. 4

When I use the word “evidence,” I mean the testimony of witnesses; documents and other things I receive as exhibits; facts that I tell you the parties have agreed are true; and any other facts that I tell you to accept as true.

Some things are not evidence. I will tell you now what is not evidence:

1. Lawyers’ statements, arguments, questions, and comments are not evidence.
2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits, are not evidence.
3. Objections are not evidence. Lawyers have a right—and sometimes a duty—to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a lawyer’s objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.
5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it unless I specifically tell you otherwise.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for. You need to pay close attention when I give an instruction about evidence that you can consider for only certain purposes, because you might not have that instruction in writing later in the jury room.

INSTRUCTION NO. 5

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms, because the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 6

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written copy of the testimony to refer to. Because of this, you have to pay close attention to the testimony and other evidence as it is presented here in the courtroom.

If you wish, however, you may take notes to help you remember what witnesses say. If you do take notes, do not show them to anyone until you and your fellow jurors go to the jury room to decide the case after you have heard and seen all of the evidence. Do not let taking notes distract you from paying close attention to the evidence as it is presented.

We have given each juror an envelope with a pad and pen in it. The envelopes are numbered according to your seat in the jury box. When you leave for breaks or at night, please put your pad and pen in the envelope and leave the envelope on your chair. Your notes will be secured, and they will not be read by anyone. At the end of trial and your deliberations, your notes should be left in the jury room for destruction.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

INSTRUCTION NO. 7

The plaintiff and the defendant have stipulated—that is, they have agreed—that the following facts are true. You must, therefore, treat those facts as having been proved.

1. On or about March 25, 2015, plaintiff executed a note for \$49,000.00.
2. Plaintiff further executed a mortgage for property on Ohio Street, Meservey, Iowa, 50457, where she now resides.
3. Sometime after March 25, 2015, plaintiff's mortgage and note were assigned to Wells Fargo Home Mortgage.
4. Sometime after March 25, 2015, plaintiff defaulted on the note following a failure to make monthly payments required under the terms of the note and mortgage.
5. Sometime after said default, Wells Fargo Home Mortgage retained the services of defendant.

INSTRUCTION NO. 8

Defendant was entitled to commence foreclosure proceedings on behalf of the lender within the 30-day period after its January 27, 2020, letter was sent (the validation period). The Fair Debt Collection Practices Act does not extinguish defendant's right to do so.

INSTRUCTION NO. 9

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.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 10

You may hear testimony from witnesses who may be knowledgeable in a field because of their education, experience, or both. These witnesses are permitted to give their opinions on matters in that field and the reasons for their opinions.

You may accept or reject testimony from these witnesses just like you may with testimony from any other witness. After considering the witnesses' education and experience, the reasons given for the opinion, and all the other evidence in the case, you may give such testimony whatever weight, if any, you think it deserves.

INSTRUCTION NO. 11

Your verdict will depend upon whether or not you find certain facts have been proved by the greater weight of the evidence, also known as a preponderance of the evidence. The obligation to prove a fact, or “the burden of proof,” is upon the party whose claim depends upon that fact.

To determine whether a fact has been proved by the greater weight of the evidence, you must consider the evidence in the case, decide which evidence is more believable, and then determine whether the fact is more likely true than not true. If you find a fact is more likely true than not true, then the fact has been proved by the greater weight of the evidence. If you find a fact is more likely not true than true, or you find the evidence on the fact is equally balanced, then the fact has not been proved by the greater weight of the evidence. The greater weight of the evidence is not determined by the number of witnesses or exhibits a party presents, but by your judgment as to the weight of all of the evidence.

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 one.

INSTRUCTION NO. 12

For plaintiff to prevail on her claim under the Fair Debt Collection Practices Act, plaintiff must prove all of the following elements by a preponderance of the evidence:

First, plaintiff refrained from disputing the validity of her debt in reliance on defendant's January 27, 2020, letter.

Second, defendant's January 27, 2020, letter violated the Fair Debt Collection Practices Act in at least one of the following ways alleged by plaintiff:

- It omitted written notice stating that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- It overshadowed or was inconsistent with the disclosure of plaintiff's right to dispute the debt; or
- It used a false representation or deceptive means to collect or attempt to collect any debt.

Third, plaintiff suffered an injury as a result of the January 27, 2020, letter.

Fourth, if plaintiff suffered an injury, the January 27, 2020, letter caused the injury and but-for the defendant's January 27, 2020, letter, plaintiff's injury would not have occurred.

Fifth, the nature and amount of damage.

If plaintiff has failed to prove any one or more of these propositions, plaintiff is not entitled to damages. If plaintiff has proved all of these propositions, then you must find in favor of plaintiff on her claim.

INSTRUCTION NO. 13

Overshadowing or inconsistency occurs when a debt-collection letter conveys information in a confusing or contradictory fashion so as to cloud the required message with uncertainty.

INSTRUCTION NO. 14

False representation or deceptive means occurs when a debt collection letter conveys information in a way that is likely to deceive or mislead a hypothetical unsophisticated consumer. An unsophisticated consumer means a consumer of below-average sophistication or intelligence.

INSTRUCTION NO. 15

Plaintiff cannot prevail on her claim if you find any of the following:

- Plaintiff did not rely on the contents of the January 27, 2020, letter;
- Plaintiff would have followed the same course regardless of what the January 27, 2020, letter said; or
- Plaintiff did not act in response to any unlawful aspect of the January 27, 2020, letter.

If you find any one of these situations applies here, plaintiff's claim fails because she did not act in reliance on the January 27, 2020, letter.

INSTRUCTION NO. 16

During the trial, I will sometimes need to talk privately with the lawyers. I may talk with them here at the bench or through electronic devices while you are in the courtroom, or I may call a recess and let you leave the courtroom while I talk with the lawyers. Either way, please understand that while you are waiting, we are working. We have these conferences to make sure that the trial is proceeding according to the law and to avoid confusion or mistakes. We will do what we can to limit the number of these conferences and to keep them as short as possible.

INSTRUCTION NO. 17

To make sure this trial is fair to all parties, you must follow these rules:

First, do not talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the trial when you go to the jury room to consider your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone tries to talk to you about the case before a verdict is rendered, please report it to the court security officer.

Fourth, during the trial, do not talk with or speak to any of the parties, lawyers, or witnesses in this case—not even to pass the time of day. It is important not only that you do justice in this case, but also that you act accordingly. If a person from one side of the lawsuit sees you talking to a person from the other side—even if it is just about the weather—that might raise a suspicion about your fairness. So, when the lawyers, parties and witnesses do not speak to you in the halls, on the elevator or the like, you must understand that they are not being rude. They know they are not supposed to talk to you while the trial is going on, and they are just following the rules.

Fifth, you may need to tell your family, close friends, and other people that you are a part of this trial. You can tell them when you have to be in court, and you can warn them not to ask you about this case, tell you anything they know or think they know about this case, or talk about this case in front of you. But, you must not communicate with anyone or post information in any manner about the parties, witnesses, participants, claims, evidence, or anything else related to this case.

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INSTRUCTION NO. 17 (CONTINUED)

You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdict or until I give you specific permission to do so. If you talk about the case with someone besides the other jurors during deliberations, it looks as if you might already have decided the case or that you might be influenced in your verdict by their opinions. That would not be fair to the parties, and it might result in the verdict being thrown out and the case having to be tried over again. During the trial, while you are in the courthouse and after you leave for the day, do not give any information to anyone, by any means, about this case. For example, do not talk face-to-face or use any electronic device, such as a telephone, cell phone, smart phone, Blackberry, PDA, computer, or computer-like device. Likewise, do not use the Internet or any Internet service; do not text or send instant messages; do not go on or use any Internet or other medium, including an Internet chat room, blog, App, or other websites such as Facebook, LinkedIn, Instagram, YouTube, or Twitter. In other words, do not communicate with anyone about this case—except for the other jurors during deliberations—until I accept your verdict.

Sixth, do not do any research—on the Internet, in libraries, newspapers, or otherwise—and do not investigate this case on your own. Do not visit or view any place discussed in this case, and do not use the Internet or other means to search for or view any place discussed in the testimony. Also, do not look up any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, me, or the court.

Seventh, do not read or otherwise receive any information, including any news stories or Internet articles or blogs that are about the case, or about anyone involved with it. Do not listen to any radio or television reports, or digital streaming, about the case or about anyone involved with it. In fact, until the trial is over, I suggest that you reduce

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INSTRUCTION NO. 17 (CONTINUED)

or limit reading or receiving any digital streaming or any newspapers or news journals, and avoid listening to any television or radio newscasts at all. I do not know whether there will be news reports about this case, but if there are, you might accidentally find yourself reading or listening to something about the case. If you want, you can have someone collect information or clip out any stories and set them aside to give to you after the trial is over. I can assure you, however, that by the time you have heard all the evidence in this case, you will know what you need to return a just verdict.

The parties have a right to have you decide their case based only on evidence admitted here in court. If you research, investigate, or experiment on your own, or get information from other sources, your verdict might be influenced by inaccurate, incomplete, or misleading information. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through cross-examination. All of the parties are entitled to a fair trial and an impartial jury, and you have to conduct yourselves in a way that assures the integrity of the trial process. If you decide a case based on information not admitted in court, you will deny the parties a fair trial. You will deny them justice. Remember, you have taken an oath to follow the rules, and you must do so. If you do not, the case might have to be retried, and you could be held in contempt of court and possibly punished.

Eighth, do not make up your mind during the trial about what your verdict should be. Keep an open mind until after you and your fellow jurors have discussed all the evidence.

INSTRUCTION NO. 18

The trial will proceed in the following manner:

First, the plaintiff's lawyer may make an opening statement. Next, the defendant's lawyer may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the lawyers expect you will see and hear during the trial.

After opening statements, the plaintiff will then present evidence. The defendant's lawyer will have a chance to cross-examine the plaintiff's witnesses. After the plaintiff has finished presenting her case, the defendant may present evidence, and the plaintiff's lawyer will have a chance to cross-examine its witnesses.

After you have seen and heard all of the evidence from both sides, the lawyers will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence. After the closing arguments, I will instruct you further on the law. After the lawyers' arguments and after the court's instructions you will go to the jury room to deliberate and decide on your verdict.

13 June 2022

Date



C.J. Williams
United States District Judge
Northern District of Iowa

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MARY THOME,

Plaintiff,

vs.

THE SAYER LAW GROUP, P.C.,

Defendant.

No. 20-CV-3058-CJW-KEM

FINAL
JURY INSTRUCTIONS

Members of the jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions before you begin your deliberations.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though the instructions I gave you at the beginning of and during trial are not repeated here.

INSTRUCTION NO. 19

It is my duty to instruct you about actual damages. By instructing you on actual damages, I do not mean to suggest what your verdict should be on any claim.

If you find for plaintiff on one or more of her claims, then you must determine what, if any, actual damages to award. "Actual damages" are the amount of money that will fairly and adequately compensate plaintiff for any injury that you find she suffered as a result of the January 27, 2020, letter. Here, plaintiff has alleged she suffered the injury of emotional distress.

Plaintiff's claim for actual damages is limited to the 80-day period between January 27, 2020, and April 15, 2020.

Any actual damages you award must be based upon evidence and not upon speculation, guesswork, or conjecture, and you must not award any damages as a result of prejudice or sympathy.

Actual damages must not be based upon a desire to punish or penalize defendant, or anyone else.

You should consider whether plaintiff made efforts to mitigate or reduce her actual damages in any way.

You may not determine the amount of actual damages by taking down each juror's estimate and agreeing in advance that the average of those estimates will be your damages award.

INSTRUCTION NO. 20

If you find in favor of plaintiff and against defendant on plaintiff's claim under the Fair Debt Collection Practices Act, then you must decide whether, in addition to actual damages, an award of statutory damages is also appropriate.

You may award statutory damages between and including \$0 and \$1,000.

In determining the statutory damages award, you must consider:

- the frequency and persistence of noncompliance by the defendant in its communication with plaintiff,
- the nature of defendant's noncompliance, and
- the extent to which defendant's noncompliance was intentional.

INSTRUCTION NO. 21

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a 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 this without going against what you believe to be the truth, because all jurors have to agree on the verdict. Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges—judges of the facts. Your only job is to study the evidence and decide what is true.

Third, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the court security officer and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone—including me—how many jurors are voting for any side.

Fourth, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Fifth, I am giving you a Verdict Form. A Verdict Form is simply the written notice of the decision that you reach in this case. The answers to the questions in the Verdict Form must be the unanimous decisions of the jury. You will take this form to the jury room, and when you have completed your deliberations and each of you has

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INSTRUCTION NO. 21 (CONTINUED)

agreed on the answers to the Verdict Form, your foreperson will fill out the form, sign, and date it. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice, or bias of any kind, return such verdict as accords with the evidence and these instructions.

15 June 2022

Date



C.J. Williams
United States District Judge
Northern District of Iowa

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

MARY THOME,

Plaintiff,

vs.

THE SAYER LAW GROUP, P.C.,

Defendant.

No. 20-CV-3058-CJW-KEM

JURY VERDICT FORM

We, the jury unanimously return the following verdicts by answering the questions submitted to us in accordance with the explanations provided.

QUESTION NO. 1: Do you find Plaintiff proved by a preponderance of the evidence that she relied on the January 27, 2020, letter?

ANSWER: _____

Note: If you answered “yes” to Question No. 1, then go on to answer Question No. 2. If you answered “no” to Question No. 1, then do not answer Question No. 2 and sign and date this Verdict Form.

QUESTION NO. 2: Do you find plaintiff proved by a preponderance of the evidence that the January 27, 2020, letter violated the Fair Debt Collection Practices Act in one or more ways?

ANSWER: _____

Note: If you answered “yes” to Question No. 2, then go on to answer Question No. 3. If you answered “no” to Question No. 2, then do not answer Question No. 3 and sign and date this Verdict Form.

QUESTION NO. 3: Do you find plaintiff proved by a preponderance of the evidence that she suffered an injury as a result of the January 27, 2020, letter?

ANSWER: _____

Note: If you answered “yes” to Question No. 3, then go on to answer Question No. 4. If you answered “no” to Question No. 3, then do not answer Question No. 4 and sign and date this Verdict Form.

QUESTION NO. 4: Do you find plaintiff proved by a preponderance of the evidence that but-for the defendant’s January 27, 2020, letter, plaintiff’s injury would not have occurred?

ANSWER: _____

Note: If you answered “yes” to Question No. 4, then go on to answer Question No. 5. If you answered “no” to Question No. 4, then do not answer Question No. 5 and sign and date this Verdict Form.

QUESTION NO. 5: Do you find plaintiff proved by a preponderance of the evidence the nature and amount of actual damages she sustained?

ANSWER: _____

Note: If you answered “yes” to Question No. 5, then go on to answer Question No. 6. If you answered “no” to Question No. 5, then do not answer Question No. 6 and sign and date this Verdict Form.

QUESTION NO. 6: State the amount of actual damages, if any, you find Plaintiff sustained that were caused by the January 27, 2020, letter:

ANSWER: \$ _____

Note: If you answered “yes” to Question No. 6 and filled in a dollar figure in response to Question No. 6, then go on to answer Question No. 7. If not, then do not answer Question No. 7 and sign and date this Verdict Form.

QUESTION NO. 7: State the amount of statutory damages, between \$0 and \$1,000, you find plaintiff should be awarded:

ANSWER: \$ _____

DATE

FOREPERSON