

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOYCE FOREBACK,

Plaintiff,

Case No: 13-10185

Honorable Laurie J. Michelson

v.

K.C. Expediting, et al,

Defendant.

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**JURY INSTRUCTIONS**

JURY INSTRUCTION NUMBER 39:

This case also involves a claim by Joyce Foreback that J.C. Expediting breached a contract.

A contract is a legally enforceable agreement to do or not to do something.

Joyce Foreback has the burden of proof on the following:

- (1) That there was a contract between her and J.C. Expediting;
- (2) That J.C. Expediting breached the contract; and
- (3) That Joyce Foreback suffered damages as a result of the breach.

In this case, the parties do not dispute that there was a contract between them.

If you find after considering all the evidence that Joyce Foreback has proved these elements, then your verdict should be for Joyce Foreback. However, if Joyce Foreback fails to prove any one of these elements, your verdict should be for J.C. Expediting.

JURY INSTRUCTION NUMBER 40:

You should interpret the words of the contract by giving them their ordinary and common meaning.

JURY INSTRUCTION NUMBER 41:

If you find that J.C. Expediting is liable to Joyce Foreback for breach of contract, then you must determine the amount of money, if any, to award to Joyce Foreback as contract damages. The following instructions tell you how to do that. If you find that J.C. Expediting is not liable, then you do not need to consider the subject of damages.

Joyce Foreback must prove by a preponderance of the evidence the amount of any damages to be awarded. However, Joyce Foreback is not required to prove her damages with mathematical precision because it is not always possible that a party can prove the exact amount of its damages. Therefore, it is necessary only that Joyce Foreback prove her damages to a reasonable certainty or a reasonable probability. However, you may not award damages on the basis of guess, speculation or conjecture.

JURY INSTRUCTION NUMBER 42:

Contract damages are intended to give the party the benefit of the party's bargain by awarding her a sum of money that will, to the extent possible, put her in as good a position as she would have been in had the contract been fully performed. The injured party should receive those damages naturally arising from the breach. Joyce Foreback cannot recover a greater amount as damages than she could have gained by the full performance of the contract.

JURY INSTRUCTION NUMBER 43:

In addition to any award for damages naturally arising from the breach, you also may include amounts to compensate Joyce Foreback for consequential damages. Consequential damages are those additional damages that were contemplated by both parties at the time they made the contract.

JURY INSTRUCTION NUMBER 44:

In fixing the amount of damages, you should not include any loss that Joyce Foreback could have prevented by exercising reasonable care and diligence when she learned or should have learned of the breach. The burden is on J.C. Expediting to prove that Joyce Foreback failed to minimize her damages and that the damages should be reduced by a particular amount as a result.