UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JAY R. MCLAUGHLIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:19-cv-00112
	)	
LANGROCK SPERRY & WOOL, LLP,	)	
	)	
Defendant.	)	

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence presented during the trial.

The lawyers may have referred to some of the rules of law in their arguments. If any difference appears between the law as stated by the lawyers and the law as stated by the court in these instructions, you must follow the court's instructions.

Our judicial system requires you to carefully and impartially consider all of the evidence, follow the law, and reach a just verdict, regardless of the consequences.

JURORS AS FINDERS OF FACT/RULINGS OF THE COURT

You and you alone are the triers of the facts. Each of you, as jurors, must determine the facts for yourselves in reaching a verdict. By the rulings which I made

during the course of the trial, I did not intend to indicate to you or to express my own views about this case.

SYMPATHY/PREJUDICE

Neither sympathy nor prejudice, for or against the parties, or any other person involved with this case, should influence you in any manner in reaching your verdict. Your deliberations should be well-reasoned and impartial.

CORPORATION, ENTITY, OR INSTITUTION AS A PARTY

As you know, Defendant Langrock Sperry & Wool in this case is a limited liability partnership. This should not affect how you view the case, however. You should consider the case to be an action between persons. A partnership is entitled to the same fair treatment and consideration that you would give a private individual. All persons, including partnerships are equal before the law.

IMPORTANT CASE

This is an important case to the parties and the court. You should give it serious and fair consideration.

ARGUMENTS/STATEMENTS/OBJECTIONS OF THE ATTORNEYS

The opening statements and closing arguments of the attorneys, their questions and objections, and all other statements that they made during the course of the trial are not evidence. The attorneys have a duty to object to evidence that they believe is not admissible. You must not hold it against either side if any attorney feels it is necessary to make an objection.

NUMBER OF WITNESSES

The fact that one side may have called more witnesses than the other side is of no significance. Your task is to evaluate the credibility of the witnesses and to weigh all of the evidence.

EVIDENCE IN THE CASE

The evidence in this case consists of the sworn testimony of the witnesses and the exhibits admitted into evidence, regardless of which party presented the evidence. When the attorneys on both sides stipulate or agree to the existence of a fact, you must, unless

otherwise instructed, accept the stipulation and regard that fact as proven. You may give the stipulated fact, like any other evidence, the weight that you think it deserves. Any evidence to which an objection was sustained or stricken by the court must be disregarded.

EVIDENCE – DIRECT OR CIRCUMSTANTIAL

There are two types of evidence from which you may find the facts of this case: direct and circumstantial evidence. Direct evidence is the testimony of someone who asserts actual knowledge of a fact, such as an eyewitness or the exhibits in the trial. Circumstantial evidence is proof of a chain of facts and circumstances tending to prove or disprove an issue in the case.

For example, if a witness were to testify that he or she had seen cows in a field, that would be an example of direct evidence that there were cows in a field. On the other hand, if a witness were to testify that he or she had seen fresh cow tracks in the field, that would be an example of circumstantial evidence that there had been cows in the field.

The law does not require a party to prove its claims or defenses by direct evidence alone, that is, by testimony of an eyewitness. One or more of the essential elements, or all of the essential elements, may be established by reasonable inference from other facts that are established by direct testimony. Circumstantial evidence may alone be sufficient to prove a claim or defense.

The law makes no distinction between the weight to be given to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should consider all the evidence in the case and give it such weight as you think it deserves.

CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of the witnesses, and the weight to give their testimony is up to you. In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe; his or her demeanor while testifying; any interest or bias he or she may have; and the reasonableness of his or her testimony, considered in light of all of the evidence in the case. Consider also any relation each witness may bear to either side of the case, any bias or prejudice, the manner in which each

witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit a witness's testimony. Two or more persons witnessing an incident or transaction may see or hear it differently. It is your duty to reconcile conflicting testimony if you can do so. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or to an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest may create a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering has an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it only with great care. This is not to suggest that any witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

You may give the testimony of each witness such weight, if any, you think it deserves. You may believe all of the testimony of any witness, you may believe it in part and disbelieve it in part, or you may reject it altogether. You do not have to accept the testimony of any witness, even if it is uncontradicted. It is for you to say what you will believe and what you will disbelieve.

PRIOR INCONSISTENT STATEMENTS

You may find that a witness has made statements outside of this trial that are inconsistent with the statements that the witness gave here. You may consider the out-of-court statements not made under oath only to determine the credibility of the witness and not as evidence of any facts contained in the statements. As to out-of-court statements

that were made under oath, such as statements made in prior testimony, you may consider them for all purposes, including for the truth of the facts contained therein.

SPECIALIZED KNOWLEDGE AND EXPERIENCE OF JURORS

In deliberating upon your verdict, you are not expected to put aside your common sense or your own observations or experience of the general affairs of life. However, a juror having specialized knowledge of a subject may neither state this knowledge to fellow jurors nor act upon it himself or herself in arriving at a verdict. You must not tell your fellow jurors about matters which are based on specialized knowledge concerning an issue in the case that did not come from the evidence received in the courtroom.

EVIDENCE OF SETTLEMENT

In this case, you heard evidence that Plaintiff Jay R. McLaughlin settled a claim against his former attorney Sean Joyce. Evidence of that settlement may be used to show the potential bias of witnesses in this case. The fact that a party settled a claim cannot be used against a party as evidence of the validity of a party's claim, the invalidity of a party's claim, or the amount of damages.

UNAVAILABLE EVIDENCE

Defendant Langrock Sperry & Wool at one time possessed the e-mails described in Exhibit 29 but claims that it is now unable to retrieve them. You may assume that such evidence would have been unfavorable to Defendant Langrock Sperry & Wool only if you find by a preponderance of the evidence that: (1) Defendant Langrock Sperry & Wool had control over the e-mails and an obligation to preserve them; (2) that the emails were destroyed with a culpable state of mind; and (3) that the missing e-mails are relevant to Plaintiff Jay R. McLaughlin's claims and would support them.

PARTNERSHIP ACTS THROUGH ITS EMPLOYEES

Defendant Langrock Sperry & Wool of Vermont is a limited liability partnership. A limited liability partnership acts through its employees. Therefore, the act of any Defendant Langrock Sperry & Wool employee that occurred while he or she was on duty and acting within the scope of his or her employment shall be considered the act of Defendant Langrock Sperry & Wool.

PREPONDERANCE OF THE EVIDENCE

To "establish by a preponderance of the evidence" means to prove that something is more likely than not. In other words, a preponderance of the evidence means such evidence that, when considered and compared with that opposed to it, has more persuasive force, and produces in your minds a belief that what is sought to be proved is more likely true than not true. A preponderance of the evidence means the greater weight of the evidence. In determining whether a fact, claim, or defense has been proven by a preponderance of the evidence, you may consider the testimony of witnesses, regardless of who may have called them, and the exhibits in evidence, and the stipulations, regardless of who may have produced or introduced them. No proof of absolute certainty is required.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you regarding the law that is applicable to your determinations in this case.

QUESTION 1:
WHETHER THE ESCROW AGREEMENT IS A CONTRACT

For his claims based on the Escrow Agreement, Plaintiff Jay R. McLaughlin must first establish that a contract existed between the parties. To do so, Plaintiff Jay R. McLaughlin must prove that there was a "meeting of the minds" between all parties to the Escrow Agreement and that there was consideration for the agreement. A "meeting of the minds" occurs when two or more parties reach agreement on a particular issue under negotiation between them. Put another way, Plaintiff Jay R. McLaughlin must prove that all parties to the Escrow Agreement understood what was being negotiated and assented to it. Plaintiff Jay R. McLaughlin must make this showing for each provision of the Escrow Agreement which he claims has been breached.

Consideration is another requirement for a valid contract. Consideration is simply another way of saying "value." By this I mean that Plaintiff Jay R. McLaughlin must show that the parties to the contract each exchanged something of value in return for what they planned to receive. The consideration necessary to support a contract does not

have to be money; it can be anything of value to the party receiving it, including personal property, real property, or even a promise to do or not to do something. I also instruct you that consideration exchanged between parties need not, in your opinion, be equal. Your job here is not to weigh whether one side or the other got the better of the deal, but instead is to determine whether any deal existed. Thus, although the particular form and amount of the consideration exchanged is not important, Plaintiff Jay R. McLaughlin does have the burden of proving that some consideration was exchanged.

Finally, you must decide whether the parties to the Escrow Agreement agreed that it would represent their agreement. If a party did not sign the Escrow Agreement, you may consider that as evidence that the party did not intend to be bound by the agreement. In the alternative, however, you may decide the parties agreed to be bound by the Escrow Agreement even without their signatures if the parties otherwise manifested their assent to its terms.

If you find that the Escrow Agreement is not a contract, the only claim that you will decide is Plaintiff Jay R. McLaughlin's promissory estoppel claim (Question 8 on the verdict form) because this is an alternative remedy when a contract has not been found to exist. You will not consider the promissory estoppel claim in Question 8 of the verdict form if you find that a contract exists.

QUESTION 2:
WHETHER DEFENDANT ACTED IN BAD FAITH
OR WITH GROSS NEGLECT

If you find a contract existed in the form of the Escrow Agreement, the Escrow Agreement requires Plaintiff Jay R. McLaughlin to establish by a preponderance of the evidence that Defendant Langrock Sperry & Wool engaged in "bad faith" or "gross neglect" in order for Defendant Langrock Sperry & Wool to be found liable under the Escrow Agreement.

Conduct involving bad faith is characterized as violating community standards of decency, fairness, and reasonableness. A complete catalogue of types of bad faith is impossible, but the following types are among those recognized: evasion of the spirit of

the agreement, lack of diligence, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in another party's performance.

Gross neglect or gross negligence requires that Plaintiff Jay R. McLaughlin establish that Defendant Langrock Sperry & Wool failed to use even slight diligence or care. Simple incompetence, inaccurate record keeping, or clerical errors do not rise to the level of gross neglect.

If you find that Plaintiff Jay R. McLaughlin has established by a preponderance of the evidence that Defendant Langrock Sperry & Wool engaged in bad faith or gross neglect, then you must proceed to consider Plaintiff Jay R. McLaughlin's breach of the implied covenant of good faith and fair dealing and breach of fiduciary duty claims (Questions 3 through 7 on the verdict form).

If you find that Plaintiff Jay R. McLaughlin has not established by a preponderance of the evidence that Defendant Langrock Sperry & Wool engaged in bad faith or gross neglect, then you must return a verdict in favor of Defendant Langrock Sperry & Wool on all of Plaintiff Jay R. McLaughlin's claims (Question 10 on the verdict form).

QUESTION 3:
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiff Jay R. McLaughlin alleges that Defendant Langrock Sperry & Wool breached a duty of good faith and fair dealing. Parties in a contractual relationship have an obligation to treat each other in good faith and deal with each other fairly. This is known as the covenant of good faith and fair dealing and it is implied in every contract. You must not address this claim if you find that the parties did not enter into an agreement.

The definition of the "covenant of good faith and fair dealing" is broad. It is an underlying principle implied in every contract that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement. The

implied covenant of good faith and fair dealing exists to ensure that parties to a contract act with faithfulness to an agreed common purpose and consistently with the justified expectations of the other party. The factual question in this case is whether Defendant Langrock Sperry & Wool acted in good faith and dealt fairly and consistently with the justified expectations of Plaintiff Jay R. McLaughlin in the performance of their agreement. The covenant of good faith and fair dealing protects against conduct that violates community standards of decency, fairness, or reasonableness.

A complete list of the types of bad faith conduct is impossible, but the following types of conduct are among those which may violate the covenant: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance. Bad faith may also be found in harassing demands for assurances of performance, rejection of performance for unstated reasons, willful failure to mitigate damages, contractual dealing which is truthful but unfair, such as taking advantage of the needy circumstances of the other party, or an abuse of a power to determine compliance or to terminate the contract. The covenant may be breached even though the actor believes its conduct is justified.

A party asserting this claim does not need to demonstrate a breach of the underlying contract to succeed on his claim for breach of the implied covenant of good faith and fair dealing. Here, Plaintiff Jay R. McLaughlin claims that Defendant Langrock Sperry & Wool breached the implied covenant of good faith and fair dealing by evading the spirit of the bargain and failure to cooperate in the other party's performance.

In order to establish a breach of the implied covenant of good faith and fair dealing, Plaintiff Jay R. McLaughlin must establish by a preponderance of the evidence the following:

1. Plaintiff Jay R. McLaughlin and Defendant Langrock Sperry & Wool entered into a contract in the form of the Escrow Agreement;
2. Defendant Langrock Sperry & Wool breached the implied covenant of good faith and fair dealing through evasion of the spirit of the bargain and failure to cooperate in the other party's performance;

3. Defendant Langrock Sperry & Wool's breach of the implied covenant of good faith and fair dealing directly and proximately caused Plaintiff Jay R. McLaughlin's damages.

You should consider the totality of the facts and circumstances, including the terms of any agreement between the parties in making these determinations. The implied covenant of good faith and fair dealing does not impose new obligations which the contract is silent on even if inclusion of the obligation is thought to be logical and wise. If Plaintiff Jay R. McLaughlin's damages were not caused by Defendant Langrock Sperry & Wool's actions, or if Plaintiff Jay R. McLaughlin would have suffered damages regardless of Defendant Langrock Sperry & Wool's actions or inactions, Plaintiff Jay R. McLaughlin has failed to prove causation. That is, if Plaintiff Jay R. McLaughlin probably would have suffered damages regardless of the way in which Defendant Langrock Sperry & Wool acted, then the acts or omissions of Defendant Langrock Sperry & Wool are not the cause of Plaintiff Jay R. McLaughlin's damages.

The law also requires Plaintiff Jay R. McLaughlin to prove by a preponderance of the evidence that Defendant Langrock Sperry & Wool's actions were a "proximate cause" of his damages. Proximate cause is a cause which results in damages in a natural and continuous sequence, unbroken by any other cause. It is a cause, without which, the result would not have occurred. This does not mean that the act or omission must be the only cause. On the contrary, many facts or things, or the conduct of two or more persons or entities may operate at the same time, either independently or together, to cause injury or damage and in such a case, each may be a proximate cause.

QUESTION 5:
BREACH OF FIDUCIARY DUTY

If you find that the parties entered into the Escrow Agreement, you must decide whether Plaintiff Jay R. McLaughlin has established by a preponderance of the evidence that Defendant Langrock Sperry & Wool breached its fiduciary duty to Plaintiff Jay R. McLaughlin by failing to disclose to Plaintiff Jay R. McLaughlin that Landel Land Clearing was engaged in fraud. I instruct you as a matter of law, every escrow agent owes a fiduciary duty to the other parties of the escrow agreement. A fiduciary duty imposes a

duty to act with the utmost good faith. Although an agent has no duty to actively root out fraud of which it had no knowledge or to police the conduct of others, an agent has a duty to disclose known fraud.

Plaintiff Jay R. McLaughlin claims Landel Land Clearing/Mark Delancey engaged in fraud by entering into a factoring agreement without disclosing it to him and by falsely telling Plaintiff Jay R. McLaughlin that Landel Land Clearing/Mark Delancey had not been paid by Access. Plaintiff Jay R. McLaughlin must prove that Landel Land Clearing/Mark Delancey committed fraud by clear and convincing evidence.

Fraud exists when a person knowingly makes a misrepresentation or knowingly conceals a material fact made to induce another to act to his or her detriment. To do something "knowingly" is to do so intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. There can be no fraud if the facts are known or reasonably discoverable by the party who claims to be defrauded.

Clear and convincing evidence requires the party asserting the claim to convince you that the existence of the fraud is highly probable, rather than merely more probable than not. Clear and convincing evidence is a very demanding standard, requiring less than evidence beyond a reasonable doubt, but more than a preponderance of the evidence.

In order to prove his claim of breach of fiduciary duty, Plaintiff Jay R. McLaughlin must establish:

1. By clear and convincing evidence that Landel Land Clearing/Mark Delancey engaged in fraud;
2. By a preponderance of the evidence that Defendant Langrock Sperry & Wool knew of Landel Land Clearing/Mark Delancey's fraud and failed to disclose it to Plaintiff Jay R. McLaughlin;
3. By a preponderance of the evidence that Defendant Langrock Sperry & Wool's failure to disclose known fraud was a breach of its fiduciary duty to act in the utmost good faith; and
4. By a preponderance of the evidence that Defendant Langrock Sperry & Wool's failure to disclose Landel Land Clearing/Mark Delancey's fraud directly and proximately caused Plaintiff Jay R. McLaughlin's damages.

An attorney generally owes no obligations or duties to a non-client who claims to be injured by virtue of the attorney's representation of his or her client. An exception to this general rule exists where the attorney enters into a contract with a non-client which renders the non-client dependent on the lawyer and creates a relationship of trust and confidence between the attorney and the non-client. For you to find that Defendant Langrock Sperry & Wool breached a fiduciary duty to Plaintiff Jay R. McLaughlin, you must determine by a preponderance of the evidence that Defendant Langrock Sperry & Wool and Plaintiff Jay R. McLaughlin entered into a relationship of trust and confidence and when that relationship came into existence. Until that relationship existed, Defendant Langrock Sperry & Wool could neither owe nor breach a fiduciary duty to Plaintiff Jay R. McLaughlin.

Plaintiff Jay R. McLaughlin claims that Defendant Langrock Sperry & Wool entered into a contract with him which not only created contractual obligations, but fiduciary responsibilities. In particular, plaintiff claims that Mr. Swift had fiduciary responsibility to him because he acted as an escrow agent under the alleged Escrow Agreement. You can only address whether Defendant Langrock Sperry & Wool breached a fiduciary duty if first you find that the parties entered into an enforceable escrow agreement.

An escrow agent under an escrow agreement owes fiduciary duties to the parties to the escrow agreement. In particular, the escrow agent has a fiduciary duty to the parties in escrow:

1. to comply strictly with the parties' written instructions;
2. to exercise reasonable skill and diligence in carrying out the escrow instructions; and
3. to disclose known fraud.

Plaintiff Jay R. McLaughlin must prove by a preponderance of the evidence that but for Defendant Langrock Sperry & Wool's actions or inactions, he would not have suffered damages. If Plaintiff Jay R. McLaughlin's damages were not caused by Defendant Langrock Sperry & Wool's actions, or if Plaintiff Jay R. McLaughlin would

have suffered damages regardless of Defendant Langrock Sperry & Wool's actions or inactions, Plaintiff Jay R. McLaughlin has failed to prove causation. That is, if Plaintiff Jay R. McLaughlin probably would have suffered damages regardless of the way in which Defendant Langrock Sperry & Wool acted, then the acts or omissions of Defendant Langrock Sperry & Wool are not the cause of Plaintiff Jay R. McLaughlin's damages.

The law also requires Plaintiff Jay R. McLaughlin to prove by a preponderance of the evidence that Defendant Langrock Sperry & Wool's actions were a "proximate cause" of his damages. Proximate cause is a cause which results in damages in a natural and continuous sequence, unbroken by any other cause. It is a cause, without which, the result would not have occurred. This does not mean that the act or omission must be the only cause. On the contrary, many facts or things, or the conduct of two or more persons or entities may operate at the same time, either independently or together, to cause injury or damage and in such a case, each may be a proximate cause.

DIRECT AND PROXIMATE CAUSE

Plaintiff Jay R. McLaughlin must prove by a preponderance of the evidence that but for Defendant Langrock Sperry & Wool's actions or inactions, he would not have suffered damages. If Plaintiff Jay R. McLaughlin's damages were not caused by Defendant Langrock Sperry & Wool's actions, or if Plaintiff Jay R. McLaughlin would have suffered damages regardless of Defendant Langrock Sperry & Wool's actions or inactions, Plaintiff Jay R. McLaughlin has failed to prove causation. That is, if Plaintiff Jay R. McLaughlin probably would have suffered damages regardless of the way in which Defendant Langrock Sperry & Wool acted, then the acts or omissions of Defendant Langrock Sperry & Wool are not the cause of Plaintiff Jay R. McLaughlin's damages.

The law also requires Plaintiff Jay R. McLaughlin to prove by a preponderance of the evidence that Defendant Langrock Sperry & Wool's actions were a "proximate cause" of his damages. Proximate cause is a cause which results in damages in a natural and continuous sequence, unbroken by any other cause. It is a cause, without which, the

result would not have occurred. This does not mean that the act or omission must be the only cause. On the contrary, many facts or things, or the conduct of two or more persons or entities may operate at the same time, either independently or together, to cause injury or damage and in such a case, each may be a proximate cause.

QUESTIONS 4 AND 6:
COMPENSATORY DAMAGES

If you decide in favor of Defendant Langrock Sperry & Wool on Plaintiff Jay R. McLaughlin's breach of the implied covenant of good faith and fair dealing and breach of fiduciary duty claims, you will not consider these instructions about damages. However, if you decide that Plaintiff Jay R. McLaughlin has proved his breach of the implied covenant of good faith and fair dealing claim and/or breach of fiduciary duty claim, you must determine the amount of money that will compensate him for each item of harm that was caused by Defendant Langrock Sperry & Wool. This compensation is called "damages." You must not award "damages" for Plaintiff Jay R. McLaughlin's promissory estoppel claim because that claim involves a different type of relief.

Please keep in mind the following general principles as you deliberate. Remember that Plaintiff Jay R. McLaughlin has the burden of proving damages by a preponderance of the evidence. Damages may not be based on sympathy, speculation, or guesswork. In making your decision, you should be guided by the evidence, common sense, and your best judgment.

In general, a plaintiff may not recover more than once for the same harm. Plaintiff Jay R. McLaughlin seeks damages from Defendant Langrock Sperry & Wool under multiple claims. However, you must not award damages for one claim that duplicates the compensation for the harm you have awarded for a different claim.

You must determine the amount of money that reasonably, fairly, and adequately compensates Plaintiff Jay R. McLaughlin for the harm that he suffered. Your aim in calculating compensatory damages is to put Plaintiff Jay R. McLaughlin as nearly as possible in the same position that he would have occupied but for Defendant Langrock Sperry & Wool's breach or breaches.

The burden is on Plaintiff Jay R. McLaughlin to prove by a preponderance of the evidence the amount of damages which he has suffered. Where the amount of damages is capable of being calculated in dollars and cents, Plaintiff Jay R. McLaughlin must demonstrate the amount of his loss in dollars and cents.

The fact that I have instructed you on the issue of damages should not be considered as the court's opinion that any party has established any other element of its claims or defenses. That is solely for you to decide.

DUTY TO MITIGATE

Under the law, a party seeking an award of damages must make reasonable attempts to minimize or eliminate those damages. If you find that Plaintiff Jay R. McLaughlin has failed to mitigate his damages by a preponderance of the evidence, you must subtract the monetary amount of any such failure from your award. In other words, a party is not entitled to recover damages to the extent it could have avoided or reduced those damages.

QUESTION 8:
PROMISSORY ESTOPPEL

If you find that the parties did not enter into an enforceable contract, you must consider whether Plaintiff Jay R. McLaughlin has proved a promissory estoppel claim by a preponderance of the evidence. If you find that the parties had an enforceable contract in the form of the Escrow Agreement, promissory estoppel is not available to Plaintiff Jay R. McLaughlin.

In order to establish a promissory estoppel claim, Plaintiff Jay R. McLaughlin must establish by a preponderance of the evidence:

1. A promise on which Defendant Langrock Sperry & Wool reasonably expected Plaintiff Jay R. McLaughlin to take action or forbearance of a substantial character;
2. The promise induced a definite and substantial detrimental and reasonable reliance by Plaintiff Jay R. McLaughlin; and
3. Injustice can be avoided only through the enforcement of the promise.

First, a specific and definite promise is required. Vague assurances are not sufficient. The promise must be more than a mere expression of intention, hope, desire, or opinion, which shows no real commitment.

If you decide that Defendant Langrock Sperry & Wool made a specific and definite promise to Plaintiff Jay R. McLaughlin, you must determine whether Plaintiff Jay R. McLaughlin reasonably relied on a promise made by Defendant Langrock Sperry & Wool. In making this determination, you must consider the totality of the circumstances. This means you must consider all the evidence presented by each party in deciding whether Plaintiff Jay R. McLaughlin has demonstrated by a preponderance of the evidence that his reliance was reasonable. Here, Plaintiff Jay R. McLaughlin alleges that Defendant Langrock Sperry & Wool promised the Escrow Agreement would serve as security for repayment of the Promissory Note.

Second, the action or inaction taken by Plaintiff Jay R. McLaughlin in reliance on the promise must be of a definite and substantial character. In other words, Plaintiff Jay R. McLaughlin must prove by a preponderance of the evidence that he relied on Defendant Langrock Sperry & Wool's promise to his detriment. You must also determine the amount of harm he suffered as a result of his detrimental and reasonable reliance on Defendant Langrock Sperry & Wool's promise.

After you have decided whether Plaintiff Jay R. McLaughlin proved by a preponderance of the evidence the existence of a promise and Plaintiff Jay R. McLaughlin's reasonable and detrimental reliance on that promise, I will decide whether he has proved by a preponderance of the evidence that injustice can be avoided only through enforcement of the promise.

VERDICT FORM

I will provide you with a verdict form that will guide you in making your determinations in this action. You must fill out the verdict form in accordance with these jury instructions. If there is any conflict between the verdict form and these instructions, you must follow these instructions.

CONCLUDING INSTRUCTIONS

JURY DELIBERATIONS/UNANIMOUS VERDICT

The verdict must represent the considered judgment of each juror. In order to return a verdict, you must all agree. Your verdict must be unanimous.

You must consult with one another. You must try to reach an agreement if you can do so without sacrificing your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. Do not hesitate to re-examine your views and change your opinions if you are convinced they are wrong. But do not surrender your honest opinion as to the weight or effect of evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

If you need to communicate with me, you should send a note through the Court Officer, signed by your foreperson. You must not discuss with the court or with any other person what is said in deliberations, and any note you send to the court must not include this information. In other words, you may ask the court questions but, in doing so, you must not reveal what the jurors are thinking or saying. You must not tell anyone how the jury stands numerically or otherwise until after you have reached a unanimous verdict and you have been discharged. Even then you need not speak to anyone about this case unless you want to.

When you have reached a verdict, tell the Court Officer that you have reached a verdict, but do not tell the Court Officer what the verdict is. You will then be brought into the courtroom where I shall ask you if you have reached a verdict, and, if you have, what it is.

JUROR NOTE TAKING

During the trial, you have been provided with pen and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether or not they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as

to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes. I will now describe the process for a read back.

READ BACK OF EVIDENCE

If, during your deliberations, you are unable to recall with any degree of accuracy, a particular part of the testimony, or part of these instructions, you may do the following:

1. Write out your question, and have the foreperson sign it;
2. Knock on the door of the jury room; and
3. Deliver your note to the Court Officer, to give to me.

After the attorneys have been consulted, and the record has been reviewed, I shall decide what action to take. I will tell you my ruling.

SELECTION AND DUTIES OF A FOREPERSON

I select REDACTED to act as your foreperson. The foreperson acts as a chairperson or moderator. It is your duty to see that discussions are carried out in a sensible and orderly manner and to see that the issues submitted for the jury's decision are fully and fairly discussed, and that every juror has a chance to say what he or she thinks upon every question. When ballots should be taken, you will see that it is done. You will act as the jury's spokesperson in the courtroom. In all other respects, the foreperson is the same as every other juror. His or her vote or opinions do not count more or less than those of his or her fellow jurors.

Ladies and gentlemen of the jury, you may now take the case and retire to begin your deliberations.

Dated at Burlington, in the District of Vermont, this 17th day of June, 2021.

Christina Reiss, ~~District Judge~~
United States District Court