

5-20-2010

Printcraft Press v. Sunnyside Park Utilities Clerk's Record v. 23 Dckt. 36556

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Vol 23 of 27

LAW CLERK

IN THE 2S volume 1 of 1

SUPREME COURT

OF THE
STATE OF IDAHO

PRINTCRAFT PRESS, INC.

Plaintiff _____ and

Respondent/Cross Appellant
vs

SUNNYSIDE PARK UTILITIES, INC., etal

Defendant _____ and

Appellant/Cross Respondent

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Joel E. Tingey, District Judge

Mark Fuller P.O. Box 50935, Idaho Falls, ID 83405

Bryan Smith P.O. Box 50731, Idaho Falls, ID 83405
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Attorney for Respondent-Cross Appellant

Filed this MAY 20 2010, 20

Clerk

Deputy

36556

36567

BONNEVILLE COUNTY
FEB 17 PM 6:26

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ATTORNEY FOR DEFENDANTS SUNNYSIDE PARK UTILITIES, INC., AND SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK, LLC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

PRINCRAFT PRESS, INC., an Idaho)
corporation,)

Plaintiff,)

v.)

SUNNYSIDE UTILITIES, INC., an Idaho)
corporation, SUNNYSIDE PARK)
OWNERS ASSOCIATION, INC., an)
Idaho corporation, and SUNNYSIDE)
INDUSTRIAL AND PROFESSIONAL)
PARK, LLC, an Idaho limited liability)
company, DOYLE BECK, an Individual,)
and KIRK WOOLF, an Individual,)

Defendants.)

SUNNYSIDE PARK UTILITIES, INC., an)
Idaho corporation, SUNNYSIDE)
INDUSTRIAL AND PROFESSIONAL)
PARK, LLC., an Idaho limited liability)
company, DOYLE BECK, an Individual)
and KIRK WOOLF, an Individual,)

Counterclaimants,)

v.)

Case No. CV-06-7097

**DEFENDANTS' REQUESTED JURY
INSTRUCTIONS**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 17th day of February, 2009:

Document Served:

DEFENDANTS' REQUESTED JURY INSTRUCTIONS

Attorneys Served:

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FACTS NOT IN DISPUTE

SUNNYSIDE'S INSTRUCTION NO. 1

The following facts are not in dispute or have been determined by the Court as a Matter of Law:

1. Prior to September 26, 2006, Plaintiff put cooling water, reverse osmosis water and water softener brine into the sanitary sewer service connected to Plaintiff's business premises. (01/22/07, Response to Request for Admission No. 21)
2. Printcraft does not own Block 1, Lot 5 of the Sunnyside Industrial and Professional Park Subdivision. (10/26/07 Response to Request for Admission No. 3)
3. Printcraft Press never built any building in the Sunnyside Industrial and Professional Park subdivision. (10/26/07 Response to Request for Admission No. 4)
4. Printcraft Press never purchased any property from Sunnyside Industrial and Professional Park, LLC or Sunnyside Park Utilities, Inc.. (10/26/07 Response to Request for Admissions No. 5 and No. 43).
5. Printcraft occupied the premises on Block 1, Lot 5 of the Sunnyside Industrial and Professional Park subdivision in January of 2006. (10/26/07 Response to Request for Admission No. 11)
6. A contract existed between Sunnyside Park Utilities and Printcraft for the provision of sewer service and Printcraft breached the contract by discharging waste in violation of state law, specifically IDAPA 58.01.03.004.03. (Memorandum Decision and Order dated April 23, 2008, pg. 9).

7. Printcraft did connect to Sunnyside's septic system, which received all of Printcraft's discharge up to the time of the lawful termination of the sewer connection by Sunnyside. (Memorandum Decision and Order, February 12, 2009, p. 6).
8. Printcraft materially breached the sewer services contract by violating State and Federal regulation, illegally discharging hazardous wastes and other prohibited substances into Sunnyside's sewer system. (Order RE: Pending Motions, July 5, 2007, pg. 2-3).
9. Sunnyside did not have specific knowledge regarding contracts Printcraft had with other parties, did not cause a breach of contract between Printcraft and any third parties, and Printcraft suffered no damages as a result of such contracts. (Order Adopting Stipulation for Entry of Partial Summary Judgment, April 25, 2007, Exhibit A, p. 2)

IDJI 1.07 and referenced Admissions and Orders

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

DUTY TO DISCLOSE (General)

SUNNYSIDE'S INSTRUCTION NO. 2

Silence may constitute fraud when a duty to disclose exists. To establish a duty to disclose Printcraft has the burden of proving by clear and convincing evidence the following proposition:

Defendants knew a fact that Printcraft did not know, the fact was so vital that if the mistake were mutual the contract would be voidable, and defendants knew that Printcraft did not know the fact.

If you find from your consideration of all the evidence that defendants had a duty to disclose a fact and that defendants did not disclose that fact to Printcraft, then you should treat the defendants' failure to disclose the fact as a statement by the defendants of the non-existence of the fact.

Sowards v. Rathbun, 134 Idaho 702, 8 P.3d 1245 (2000).

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

FRAUDULENT NON-DISCLOSURE (general)

SUNNYSIDE'S INSTRUCTION NO. 3

Printcraft has the burden of proving each of the following propositions by clear and convincing evidence:

1. The defendants failed to disclose a fact to Printcraft, and thereby defendants are treated as having made the statement that the fact did not exist;
2. The statement was false;
3. The statement was material;
4. The defendants either knew the statement was false or were unaware of whether the statement was true at the time the statement was made.
5. Printcraft did not know that the statement was false;
6. The defendants intended for Printcraft to rely upon the statement and act upon it in a manner reasonably contemplated;
7. Printcraft did rely upon the truth of the statement;
8. Printcraft's reliance was reasonable under all the circumstances;
9. Printcraft suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to Printcraft, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for Printcraft on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for defendants.

IDJI 4.60 Fraud-issues (modified for constructive fraud implied representation if the Court finds a
Duty to Disclose as a Matter of Law)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

DUTY TO DISCLOSE (Connections)

SUNNYSIDE'S INSTRUCTION NO. 4

Silence may constitute fraud when a duty to disclose exists. To establish a duty to disclose Printcraft has the burden of proving by clear and convincing evidence the following proposition:

Defendants knew that the building to be occupied by Printcraft was not allowed to connect to the septic system operated by Sunnyside Park Utilities, that Printcraft did not know that the building to be occupied by Printcraft was not allowed to connect to the septic system operated by Sunnyside Park Utilities, that if the building to be occupied by Printcraft was not allowed to connect to the system was a fact so vital that if the mistake were mutual the contract would be voidable, and Defendants knew that Printcraft did not know that the building to be occupied by Printcraft could not be connected to the septic system operated by Printcraft.

If you find from your consideration of all the evidence that the defendants had a duty to disclose that the building to be occupied by Printcraft could not be connected to the septic system and that the defendants did not disclose that fact to Printcraft, then you should treat defendants' failure to disclose the fact as a statement by defendants to Printcraft that the building to be occupied by Printcraft could be connected to Sunnyside Park Utilities septic system.

Sowards v. Rathbun, 134 Idaho 702, 8 P.3d 1245 (2000)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

FRAUDULENT NON-DISCLOSURE (connections)

SUNNYSIDE'S INSTRUCTION NO. 5

Printcraft has the burden of proving each of the following propositions by clear and convincing evidence:

1. That defendants failed to disclose that the building to be occupied by Printcraft could not be connected to Sunnyside Park Utilities septic system, and thereby defendants are treated as having made the statement that the building to be occupied by Printcraft could be connected to Sunnyside Park Utilities septic system;
2. The statement was false;
3. The statement was material;
4. Sunnyside Park Utilities either knew the statement was false or was unaware of whether the statement was true at the time the statement was made.
5. Printcraft did not know that the statement was false;
6. Sunnyside Park Utilities intended for Printcraft to rely upon the statement and act upon it in a manner reasonably contemplated;
7. Printcraft did rely upon the truth of the statement;
8. Printcraft's reliance was reasonable under all the circumstances;
9. Printcraft suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to Printcraft, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for Printcraft on this issue.

If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for Sunnyside Park Utilities.

IDJI 4.60 Fraud-issues (modified for constructive fraud implied representation if the Court finds a duty to disclose existed as a matter of law)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

DUTY TO DISCLOSE (Limitations)

SUNNYSIDE'S INSTRUCTION NO. 6

Silence may constitute fraud when a duty to disclose exists. To establish a duty to disclose Printcraft has the burden of proving by clear and convincing evidence the following proposition:

Defendants knew that the septic system had limitations as to the quantity of waste the system could accept and the types of waste the system could accept, that the limitations of the septic system was a fact so vital that if the mistake were mutual the contract would be voidable, and Defendants knew that Printcraft did not know the limitations of the septic system.

If you find from your consideration of all the evidence that defendants had a duty to disclose that the limitations of the septic system as to the quantity of waste the system could accept and the types of waste the system could accept, and that defendants did not disclose that fact to Printcraft, then you should treat defendants' failure to disclose the fact as a statement by defendants to Printcraft that there were no limitations on the septic system.

Sowards v. Rathbun, 134 Idaho 702, 8 P.3d 1245 (2000)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

FRAUDULENT NON-DISCLOSURE (limitations)

SUNNYSIDE'S INSTRUCTION NO. 7

Printcraft has the burden of proving each of the following propositions by clear and convincing evidence:

1. That defendants failed to disclose that the septic system had limitations as to quantity and types of substances that could be discharged, and thereby defendants are treated as having made the statement that there were no limitations on the septic system;
2. The statement was false;
3. The statement was material;
4. Defendants either knew the statement was false or was unaware of whether the statement was true at the time the statement was made.
5. Printcraft did not know that the statement was false;
6. Defendants intended for Printcraft to rely upon the statement and act upon it in a manner reasonably contemplated;
7. Printcraft did rely upon the truth of the statement;
8. Printcraft's reliance was reasonable under all the circumstances;
9. Printcraft suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to Printcraft, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for Printcraft on this issue.

If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for defendants.

IDJI 4.60 Fraud-issues (modified for constructive fraud implied representation if the Court finds that a duty to disclose existed)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

DUTY TO DISCLOSE (Third Party Beneficiary Agreement and Rules and Regulations)

SUNNYSIDE'S INSTRUCTION NO. 8

Silence may constitute fraud when a duty to disclose exists. To establish a duty to disclose Printcraft has the burden of proving by clear and convincing evidence the following proposition:

The Defendants knew about the existence of the Third Party Beneficiary Utility Agreement and Sunnyside Park Utilities Rules and Regulations for sewer service, that Printcraft did not know about the existence of the Third Party Beneficiary Utility Agreement and Sunnyside Park Utilities Rules and Regulations for sewer service, that the existence of the Third Party Beneficiary Utility Agreement and the Rules and Regulations was a fact so vital that if the mistake were mutual the contract would be voidable, and Defendants knew that Printcraft did not know about the existence of the Third Party Beneficiary Utility Agreement and the Rules and Regulations.

If you find from your consideration of all the evidence that defendants had a duty to disclose the Third Party Beneficiary Utility Agreement and Sunnyside Park Utilities Rules and Regulations, and that defendants did not disclose that fact to Printcraft, then you should treat defendants' failure to disclose the fact as a statement by defendants to Printcraft that .

Sowards v. Rathbun, 134 Idaho 702, 8 P.3d 1245 (2000)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

FRAUDULENT NON-DISCLOSURE (Third Party Beneficiary Agreement and Rules and Regulations)

SUNNYSIDE'S INSTRUCTION NO. 9

Printcraft has the burden of proving each of the following propositions by clear and convincing evidence:

1. That Sunnyside Park Utilities failed to disclose that the building to be occupied by Printcraft was governed by the Third Party Beneficiary Agreement and Rules and Regulations, and thereby Sunnyside Park Utilities is treated as having made the statement that the building to be occupied by Printcraft was not governed by the Third Party Beneficiary Agreement and Rules and Regulations;
2. The statement was false;
3. The statement was material;
4. Sunnyside Park Utilities either knew the statement was false or was unaware of whether the statement was true at the time the statement was made.
5. Printcraft did not know that the statement was false;
6. Sunnyside Park Utilities intended for Printcraft to rely upon the statement and act upon it in a manner reasonably contemplated;
7. Printcraft did rely upon the truth of the statement;
8. Printcraft's reliance was reasonable under all the circumstances;
9. Printcraft suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to Printcraft, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for Printcraft on this issue.

If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for Sunnyside Park Utilities.

IDJI 4.60 Fraud-issues (modified for constructive fraud implied representation if the Court finds that a duty to disclose existed)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

MATERIALITY

SUNNYSIDE'S INSTRUCTION NO. 10

"Materiality" refers to the importance of the representation in determining the party's course of action. A representation is material if (a) a reasonable person would attach importance to its existence or nonexistence in determining a choice of action in the transaction in question, or (b) the maker of the representation knows or has reason to know that the recipient is likely to regard the matter as important in determining the choice of action, whether or not a reasonable person would so consider.

IDJI 6.08.5

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

MUTUAL MISTAKE-VOIDABLE

SUNNYSIDE'S INSTRUCTION NO. 11

A mutual mistake occurs when both parties at the time of contracting, share a misconception about a basic assumption or vital fact upon which they base their bargain. Where the mistake has a material effect on the agreed exchange of performances, the contract is voidable. The mistake must be so substantial and fundamental as to defeat the object of the parties.

Thieme v. Worst, 113 Idaho 455, 459, 745 P.2d 1076 (Ida.App. 1987)

Dennett v. Kuenzli, 130 Idaho 21, 27, 936 P.2d 219 (Ida. App. 1997)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

RELIANCE

SUNNYSIDE'S INSTRUCTION NO. 12

The term reliance means a voluntary choice of conduct by the person harmed and [implies] that the person exercising it can decide between available alternatives. There is no reliance if the party relies on its own judgment or investigations or its own examinations of the property involved, or on the advice of third persons.

Black's Law Dictionary 1291 (6th Ed. 1990)(Quoted in *McCormack v. Amsouth Bank*, 759 So.2d 538 (Ala. 1999).

Weitzel v. Jukich, 73 Idaho 301, 305, 251 P. 2d 542 (1952)

Nelsen v. Hoff, 70 Idaho 354, 360, 218 P. 2d 345 (1950)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

REASONABLE RELIANCE

SUNNYSIDE'S INSTRUCTION NO. 13

Reasonable reliance means that the party had the right to rely and that the reliance was justified. In order for the reliance to be justified the reliance must have been rightful, defensible, and warranted or sanctioned by law.

-*Order*, December 26, 2007, p.3.

-*Watson v. Weick*, 141 Idaho 500, 507, 112 P.3d 788 (2005). ("One of the elements that must be proven in order to establish fraud is justifiable reliance upon a false statement or representation.").

-*Deutz-Allis Credit Corp. v. Logging*, 121 Idaho 247, 251, 824 P.2d 178 (Ida.App. 1992).

-Black's Law Dictionary definition of "Justifiable" Revised Fourth Edition (1968).

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

PROXIMATE CAUSE

SUNNYSIDE'S INSTRUCTION NO. 14

When I use the expression "proximate cause," or "proximately caused," I mean a cause that, in natural or probable sequence, produce the injury, the loss or the damage complained of. It need not be the only cause. It is sufficient if it is a substantial factor in bringing about the injury, loss or damage. It is not a proximate cause if the injury, loss or damage likely would have occurred anyway.

There may be one or more proximate causes of an injury. When the negligent conduct of two or more persons or entities contributes concurrently as substantial factors in bringing about the injury, the conduct of each may be a proximate cause of the injury regardless of the extent to which each contributes to the injury.

IDJI 2.30.2-Proximate cause-"substantial factor," without "but for" test.

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

MITIGATION OF DAMAGES

SUNNYSIDE'S INSTRUCTION NO. 15

A person who has been damaged must exercise ordinary care to minimize the damage and prevent further damage. Any loss that results from the failure to exercise such care cannot be recovered.

IDJI 9.14 Mitigation of damages

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

DISCONNECTION OF THE SEWER SERVICE

SUNNYSIDE'S INSTRUCTION NO. 16

Printcraft is not entitled to recover any damages which were caused by Sunnyside Park Utilities' disconnection of Printcraft's septic service, as the termination was justified by Printcraft's discharge of illegal substances into the septic system.

Court's Order entered January 15, 2009.

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

BREACH OF CONTRACT WATER DISCONNECTION

SUNNYSIDE'S INSTRUCTION NO. 17

Printcraft has the burden of proving each of the following propositions:

1. A contract for the provision of water services existed between Sunnyside Park Utilities and Printcraft;
2. Sunnyside Park Utilities breached the contract;
3. Printcraft has been damaged on account of the breach; and
4. The amount of damages.

If you find from your consideration of all the evidence that each of the propositions required of the plaintiff has been proved, then you must consider the issue of the affirmative defenses raised by the defendant, and explained in the next instruction. If you find from your consideration of all of the evidence that any of the propositions in this instruction has not been proved, your verdict should be for the defendant.

IDJI 6.10.1-Breach of bilateral contract-general case

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

AFFIRMATIVE DEFENSES (WATER DISCONNECTION)

SUNNYSIDE'S INSTRUCTION NO. 18

In this case the defendant has asserted certain affirmative defenses. The defendant has the burden of proof on each of the affirmative defenses asserted.

1. Prior breach by Printcraft

Sunnyside Park Utilities is excused from any breach if you find that Printcraft breached the agreement before Sunnyside Park Utilities breached the contract.

2. Waiver

Waiver is a voluntary relinquishment of a known right and may be evidenced by conduct, by words, or by acquiescence.

3. Abandonment

A contract is abandoned where both parties expressly abandon the contract, or where one party acts in a manner indicating an intention to abandon the contract, or acts in a manner inconsistent with the continuation of the contract, and the other party acquiesces therein. Abandonment of a contract is a question of intent. It may be implied from the parties' actions. If the contract is abandoned, the law leaves the parties where it finds them.

IDJI 6.10.04-General Contract-affirmative defenses

J.P. Stavens v. City of Wallace, 129 Idaho 542, 545, 928 P.2d 46 (Ida.App. 1996)-Prior Breach

IDJI 6.24.1-Waiver

IDJI 6.25-Abandonment

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

DISREGARD SIGN

SUNNYSIDE'S INSTRUCTION NO. 19

You have heard testimony regarding a sign placed by other parties at the entrance to the Sunnyside Subdivision. There is no evidence that any of the Defendants placed the sign or made any partial or ambiguous statement which would have been misleading to Printcraft. Printcraft is precluded from asserting any claim or presenting evidence related to allegations of fraud based on affirmative or actual misrepresentations, as opposed to allegations for fraud based on nondisclosure. You should disregard any reference to the sign and should not consider it in any way in determining Plaintiff's claims for fraud by nondisclosure, or in the consideration of damages.

Source: *Memorandum Decision and Order*, August 31, 2007, p. 14.

Order on Motion to Dismiss, September 9, 2008, p. 2.

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

FRAUD

SUNNYSIDE'S INSTRUCTION NO. 20

Sunnyside Park Utilities has the burden of proving each of the following propositions by clear and convincing evidence:

1. That Printcraft stated a fact to Sunnyside Park Utilities;
2. The statement was false;
3. The statement was material;
4. Printcraft either knew the statement was false or was unaware of whether the statement was true at the time the statement was made;
5. Sunnyside Park Utilities did not know that the statement was false;
6. Printcraft intended for Sunnyside Park Utilities to rely upon the statement and act upon it in a manner reasonably contemplated;
7. Sunnyside Park Utilities did rely upon the truth of the statement;
8. Sunnyside Park Utilities reliance was reasonable under all the circumstances;
9. Sunnyside Park Utilities suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to Sunnyside Park Utilities, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for Sunnyside Park Utilities on this issue. If you find from your consideration of all the evidence that any of the

foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for Printcraft.

IDJI 4.60 Fraud-issues

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

FRAUDULENT NON-DISCLOSURE (SPU Constructive Fraud-specific)

SUNNYSIDE'S INSTRUCTION NO. 21

Sunnyside Park Utilities has the burden of proving each of the following propositions by clear and convincing evidence:

1. That Printcraft failed to disclose that Printcraft intended to discharge reverse osmosis water, water softener brine, ink, chemicals and excessive flows into Sunnyside Park Utilities septic system, and thereby Printcraft is treated as though it made a statement to Sunnyside Park Utilities that Printcraft would not discharge reverse osmosis water, water softener brine, ink, chemicals and excessive flows into the septic system;
2. The statement was false;
3. The statement was material;
4. Printcraft either knew the statement was false or was unaware of whether the statement was true at the time the statement was made.
5. Sunnyside Park Utilities did not know that the statement was false;
6. Printcraft intended for Sunnyside Park Utilities to rely upon the statement and act upon it in a manner reasonably contemplated;
7. Sunnyside Park Utilities did rely upon the truth of the statement;
8. Sunnyside Park Utilities reliance was reasonable under all the circumstances;
9. Sunnyside Park Utilities suffered damages proximately caused by reliance on the false statement.

10. The nature and extent of the damages to Sunnyside Park Utilities, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for Sunnyside Park Utilities on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for Printcraft.

IDJI 4.60 Fraud-issues (modified for constructive fraud if the Court finds that a duty to disclose existed)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

BREACH OF CONTRACT (Damages)

SUNNYSIDE'S INSTRUCTION NO. 22

The Court has found that a contract existed between Sunnyside Park Utilities and Printcraft for the provision of sewer service and that Printcraft breached the contract by discharging illegal substances into Sunnyside Park Utilities's septic system in violation of IDAPA 58.01.03.004.03.

The Court has already awarded \$1,228.64 in damages to Sunnyside Park Utilities for Printcraft's breach of the contract. These are the costs incurred by Sunnyside to rent a backhoe to disconnect the sewer service to the building occupied by Printcraft. You must determine what, if any, additional damages were proximately caused by Printcraft's breach of the contract.

Memorandum Decision and Order, dated April, 23 2008, p.9.

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

COVENANT OF GOOD FAITH AND FAIR DEALING

SUNNYSIDE'S INSTRUCTION NO. 23

In every contract, there is an implied obligation on the part of both parties. The covenant requires that the parties perform, in good faith, the obligations imposed by their agreement. The Court has found that a contract existed between Sunnyside Park Utilities and Printcraft and that Printcraft breached that contract. Sunnyside Park Utilities asserts that in addition to breach of the contract, Printcraft did not deal fairly and cooperate with Sunnyside Park Utilities and did not exercise good faith in Printcraft's performance of the contract.

The obligation of good faith and fair dealing is breached by any action which violates, nullifies or significantly impairs any benefit of the contract. You must consider the reasonableness of Printcraft's actions in carrying out the contract provisions and based upon the evidence you must determine if Printcraft acted in good faith, cooperated, and dealt fairly with Sunnyside Park Utilities.

If you find from your consideration of all the evidence that the above propositions have been proved, then your verdict should be for Sunnyside Park Utilities on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved, then your verdict should be for Printcraft.

Hall v. Farmers Alliance Mut. Ins. Co., 145 Idaho 313, 324, 179 P.3d 276 (2008)

Steiner v. Ziegler-Tamura LTD., 138 Idaho 238, 242, 61 P.3d 595 (2002).

Independence v. Hecla Mining, 143 Idaho 22, 27, 137 P.3d 409 (2006)

Irwin Rogers IWS. Agency, Inc. v. Murphy, 122 Idaho 270, 274, 833 P.2d 128 (Ct.App.1992).

Huyett V. Idaho State University, 140 Idaho 904, 910, 104 P.3d 946 (2004).

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

TRESPASS

SUNNYSIDE'S INSTRUCTION NO. 24

Sunnyside Park Utilities has the burden of proving each of the following propositions:

1. That Printcraft or Printcraft's agents went upon Sunnyside Park Utilities' land;
2. That Sunnyside Park Utilities did not consent to Printcraft's entry on Sunnyside Park Utilities' land.

If you find from your consideration of all the evidence that the propositions have been proved, then your verdict should be for Sunnyside Park Utilities, but if you find from your consideration of all of the evidence that the propositions have not been proved, then your verdict should be for Printcraft.

IDJI 4.40 (modified)

3rd proposition removed, based upon the comment to the IDJI. "However, the plaintiff, 'need not prove actual harm in order to recover nominal damages.' Aztec Ltd., Inc., v. Creekside Inv. Co. 100 Idaho 566, 570, 602 P.2d 64, 68 (1979). Nominal damages are 'presumed to flow naturally from a wrongful entry upon land.' Id."

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

WILLFUL TRESPASS

SUNNYSIDE'S INSTRUCTION NO. 25

If you find that Printcraft or Printcraft's agents entered onto Sunnyside Park Utilities' property, without permission of Sunnyside Park Utilities and Sunnyside Park Utilities property was posted with "No Trespassing" signs or other notices of like meaning, spaced at intervals of not less than one (1) notice per six hundred sixty (660) feet along Sunnyside Park Utilities real property, then you should enter a verdict in favor of Sunnyside Park Utilities that Printcraft committed a willful trespass.

Idaho Code §6-202- Actions for Trespass

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

25 33

AGENCY

SUNNYSIDE'S INSTRUCTION NO. 26

The term "agent" refers to a person authorized by another, called the "principal," to act for or in the place of the principal. The principal is responsible for any act of the agent within the agent's scope of authority.

IDJI 6.40.1 Agency defined

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

AGENT'S ACTS BIND PRINCIPAL

SUNNYSIDE'S INSTRUCTION NO. 27

There is no dispute in this case that Robert Starr and Lance Schuster were agents of Printcraft, on April 2, 2008. Therefore, Printcraft, the principal is responsible for any act of Robert Starr or Lance Schuster, the agents, within the scope of the agents' authority.

IDJI 6.41.1-Agent's act binds Principal-agency admitted.

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

SCOPE OF AUTHORITY-AGENT

SUNNYSIDE'S INSTRUCTION NO. 28

Conduct is within the scope of the agent's authority if it occurs while the agent is engaged in the duties that the agent was asked or expected to perform and relates to those duties. It is not necessary that a particular act or failure to act be expressly authorized by the principal to bring it within the scope of the agent's authority. Conduct for the benefit of the principal that is incidental to, customarily connected with, or reasonably necessary for the performance of such duties is within the scope of the agent's authority.

IDJI 6.43.1 Scope of Authority

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____

NUISANCE

SUNNYSIDE'S INSTRUCTION NO. 29

A nuisance is anything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

Sunnyside Park Utilities bears the burden of proving that:

1. Printcraft has not properly maintained and operated its sewage tanks; or
2. Printcraft's placement of the tanks obstructed Sunnyside Park Utilities free use of its property.

If you find from your consideration of all the evidence that Printcraft's conduct constituted a nuisance, then your verdict should be for Sunnyside Park Utilities on this issue. If you find from your consideration of all the evidence that Printcraft's conduct was not a nuisance, then your verdict should be for Printcraft.

Idaho Code §52-101

Larsen v. Village of Lava Hot Springs, 88 Idaho 64, 72, 396 P.2d 471 (Idaho 1964).

IDAPA 58.01.03.005.02.a ("Portable nondischarging systems may be installed...if they are properly maintained...")

Benninger v. Derifield, 142 Idaho 486, 491, 129 P.3d 1235 (2006).

See Memorandum Decision and Order, pg. 9, dated October 1, 2008

APPROVED _____
 REJECTED _____
 MODIFIED _____
 OTHER _____

PUNITIVE DAMAGES

SUNNYSIDE'S INSTRUCTION NO. 30

If Sunnyside Park Utilities proves by clear and convincing evidence that the defendant's acts which proximately caused injury to the plaintiff were an extreme deviation from reasonable standards of conduct and that these acts were malicious, fraudulent, oppressive or outrageous you may, in addition to any compensatory damages to which you find Sunnyside Park Utilities entitled, award to Sunnyside Park Utilities an amount which will punish Printcraft and deter Printcraft and others from engaging in similar conduct in the future.

IDJI 9.20 Punitive Damages (Alternate)

APPROVED _____
REJECTED _____
MODIFIED _____
OTHER _____