

**FROM THE COMMITTEE ON
MODEL CIVIL JURY INSTRUCTIONS**

The Committee has adopted the following new and amended model civil jury instructions effective January 28, 2022.

ADOPTED

**M CIV JI CHAPTER 142
CONTRACTS**

M Civ JI 142.17 Adequacy of Consideration

The consideration for a promise or act does not have to be equal in value to the promise or act. It is enough if the consideration is given, in whole or in part, in exchange for the promise. If one party performed any act at the request of the other party, no matter how small or nominal, then there was valuable consideration to support the contract, provided that the party performed such act in good faith.

Note on Use

There is not a separate instruction for the affirmative defense that the contract was illusory. In that situation, the jury looks to whether the consideration is so insubstantial that it imposes no obligation. *Ile v Foremost Ins Co*, 293 Mich App 309, 315 (2011) (quoting *Black's Law Dictionary* (9th ed), p 370), rev'd on other grounds 493 Mich 915 (2012)); MI Civil Jur Contracts § 5, Mutuality of Obligation (2014); *Amerisure Mut Ins Co v Carey Transp Inc*, 578 F Supp 2d 888, 921 (WD Mich, 2008).

Comment

Harris v Chain Store Realty Bond & Mortgage Co, 329 Mich 136 (1950); *Levitz v Capitol Savings & Loan Co*, 267 Mich 92 (1934).

History

M Civ JI 142.17 was added March 2005.

M Civ JI 142.50 Introduction to Contract Interpretation

[*Name of party*] has the burden to prove what the parties intended the contract to mean. The contract is to be interpreted so as to give effect to the parties' intentions. You

cannot make for the parties a different contract than the parties made for themselves. It is the intent expressed or apparent in the writing that controls.

Comment

Zurich Ins Co v CCR & Co, 226 Mich App 599 (1997); *Old Kent Bank v Sobcak*, 243 Mich App 57 (2000).

History

M Civ JI 142.50 was added March 2005. Title amended January 2022.

M Civ JI 142.53 Words Given Ordinary Meaning

The words of the contract must be given their ordinary meaning.

Comment

Wilkie v Auto Owners, 245 Mich App 521 (2001) rev'd on other grds 469 Mich 41 (2003).

History

M Civ JI 142.53 was added March 2005. Amended January 2022.

M CIV JI 142.53A Giving Effect to Every Word

Additionally, contracts must be interpreted, when possible, so as to give effect to every word, phrase, and clause in the contract, and to avoid an interpretation that would render any part of the contract unnecessary, meaningless, void or unenforceable.

History

M Civ JI 142.53A was added January 2022.

M Civ JI 142.54 Custom and Usage of Trade / Business / Industry

The customs and usages of the [trade / business_/ industry] may be shown to establish a point on which the contract is ambiguous. To show the existence of a custom or usage of the [trade / business / industry], a party must prove that the custom was well established and was generally followed in the [trade / business / industry] at the time the contract was made. It must also be shown that [*name of party against whom it is being asserted*] knew of the usage and had reason to know that [*name of other party*]

assented to the words of the contract in accordance with it, or that, if [*name of party against whom it is being asserted*] did not know of the usage, an ordinary person in that [*name of party against whom it is being asserted*]'s position would have known of it.

Note on Use

This instruction should be given only if the contract is ambiguous.

Comment

Schroeder v Terra Energy Ltd, 223 Mich App 176 (1997); *Independence Twp v Reliance Bldg Co*, 175 Mich App 48 (1989).

History

M Civ JI 142.54 was added March 2005. Amended January 2022.

M CIV JI 142.56 Determining the Meaning of Ambiguous Language in an Agreement

When a contract is ambiguous, that is, when the language is reasonably susceptible of two different interpretations, you must decide its meaning. To determine what the parties intended by the ambiguous language, you should consider [the statements of the representatives of the parties / the conduct of the parties and the custom and usage of the trade / business / industry] in accordance with the instructions that I will now give you.

Comment

Klapp v United Insurance Group Agency, Inc, 468 Mich 459, 469-474; 663 NW2d 447 (2003). The Court should use this instruction only if the contract language is ambiguous. It should then be followed by M Civ JI 142.53, 142.54 and 142.55, as applicable.

History

M Civ JI 142.56 was added January 2022.

M CIV JI 142.57 Interpretation Against the Drafter

If you cannot determine what the parties intended by the ambiguous language after reviewing all the evidence admitted during trial, including such things as [the conduct of the parties, the statements of the representatives of the parties / the conduct of the parties and the custom and usage of the trade / business / industry], then you should interpret the ambiguous language against the party who prepared the agreement.

Comment

Klapp v United Insurance Group Agency, Inc, 468 Mich 459, 469-474; 663 NW2d 447 (2003)

History

M Civ JI 142.57 was added January 2022.

M CIV JI 142.60 Affirmative Defense—Release

As an affirmative defense to the breach of contract claim, [name of party being sued on contract] claims that [name of party] released [him / her / it] from all obligations owed under the contract.

A release is an agreement to give up or abandon one or more claims or rights that one person may have against the other. There is no particular form or established set of words that is necessary to prove a release. A release may be oral or may be in writing. A release is valid if it is fairly and knowingly made.

If you find that [name of party] released [name of party being sued on contract] from [his / her / its] obligations under the contract, your verdict should be in favor of [name of party being sued on contract] as to all released claims.

Comment

66 Am Jur 2d Release § 1; *J&J Farmer Leasing, Inc, v Citizens Ins Co of Am*, 472 Mich 353, 357 (2005); *Adell v Sommers, Schwartz, Silver & Schwartz, PC*, 170 Mich App 196, 201 (1988).

History

M Civ JI 142.60 was added January 2022.

M CIV JI 142.61 Affirmative Defense—Failure of Performance

As an affirmative defense to the breach of contract claim, [name of party being sued on contract] claims that [name of party] did not sufficiently perform under the contract. To succeed on this defense, [name of party being sued on contract] has the burden of proving that [name of party]'s contractual performance was so seriously deficient that the material purpose of the contract ceased to exist or became worthless, and that the contract supports voiding it for this reason.

Comment

Innovation Ventures v Liquid Manufacturing, 499 Mich 491 (2016).

History

M Civ JI 142.61 was added January 2022.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

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