

Cause No. 1-05-322

Michelle Ivey

vs.

Shoreline Restaurant Corporation, d/b/a
The Oar House Restaurant

§
§
§
§
§
§

IN THE DISTRICT COURT
ROCKWALL COUNTY, TEXAS
382nd JUDICIAL DISTRICT

KAY A. FILED FOR RECORD
DISTRICT CLERK
ROCKWALL COUNTY, TEXAS
FEB 14 2008
AM 7/8/9/10/11/12/1/2/3/4/5/6 PM

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.
5. You will not decide an issue by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

QUESTION NO. 1

Was Michelle Ivey subjected to harassment based on sex during her employment with Shoreline Restaurant Corporation d/b/a The Oar House Restaurant?

"Harassment based on sex" occurred if:

1. Michelle Ivey was subjected to sexual advances, requests for sexual favors, and/or other conduct of a sexual nature that was unwelcome and undesirable or offensive to Michelle Ivey; and
2. the harassment complained of altered a term, condition, or privilege of employment leading to constructive discharge; and
3. the conduct was committed by a supervisor who had authority over hiring, advancement, dismissals, discipline, or other employment decisions affecting Michelle Ivey.

Harassment alters a term, condition, or privilege of employment when a reasonable person would find that the harassment created an abusive working environment. In determining whether an abusive working environment existed, consider the following: the frequency of the conduct; its severity; whether it was physically threatening or humiliating or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.

An employee is considered to have been discharged when an employer makes conditions so intolerable that a reasonable person in the employee's position would have felt compelled to resign.

Answer "Yes" or "No."

Answer: Yes

If your answer to Question No. 1 is "Yes" and your answer to Question No. 2 is "No" then answer the following question. Otherwise do not answer the following question.

QUESTION NO. 3

Is Shoreline Restaurant Corporation d/b/a The Oar House Restaurant legally excused from responsibility for the conduct of Terry Welch founding Question No. 1?

Shoreline Restaurant Corporation d/b/a The Oar House Restaurant is legally excused if:

1. Shoreline Restaurant Corporation d/b/a The Oar House Restaurant exercised reasonable care to prevent and correct promptly any harassment behavior; and
2. Michelle Ivey unreasonably failed to take advantage of any preventive or corrective opportunities by her employer or to avoid harm otherwise.

Answer "Yes" or "No."

Answer: NO

If your answer to Question No. 2 is "Yes" or if your answer to Question No. 3 is "No, then answer the following question. Otherwise, do not answer the following question.

You are instructed that any monetary recovery for lost wages is subject to federal income taxes. Any recovery for emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other noneconomic losses are not subject to federal income taxes.

QUESTION NO. 4

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Michelle Ivey for her damages, if any, that resulted from such conduct?

Consider the following elements of damages, if any, and none other.

Do not include interest on any amount of damages you may find.

Do not include back pay or interest in calculating compensatory damages, if any.

Answer in dollars and cents for damages, if any.

Do not include in your answer any amount that you find Michelle Ivey could have earned by using reasonable efforts to find substantially equivalent employment after leaving Shoreline Restaurant Corporation d/b/a The Oar House Restaurant.

a. Back pay.

"Back pay" is that amount of wages and employment benefits that Michelle Ivey would have earned if she had not been subjected to her employer's unlawful conduct less any wages, unemployment compensation benefits or worker' compensation benefits she received in the interim.

Answer: \$9,000.

b. Compensatory damages in the past, which include emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other noneconomic losses.

Answer: \$200,000.

c. Compensatory damages in the future, which include economic losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other noneconomic losses.

Answer: \$0.

Answer the following question regarding Shoreline Restaurant Corporation d/b/a The Oar House Restaurant only if you unanimously answered "Yes" to Question No. 1 and you answered any part of Question No. 4. Otherwise, do not answer the following question.

To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION NO. 5

Do you find by clear and convincing evidence that Shoreline Restaurant Corporation d/b/a The Oar House Restaurant engaged in the discriminatory practice that you have found in answer to Question No. 1 with malice or reckless indifference to the right of Michelle Ivey to be free from such practices?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent by Shoreline Restaurant Corporation d/b/a The Oar House Restaurant to cause substantial injury or harm to Michelle Ivey.

Answer "Yes" or "No."

Answer: Yes

QUESTION NO. 6

Did Shoreline Restaurant Corporation d/b/a The Oar House make a good-faith effort to prevent sexual harassment in its workplace?

Answer "Yes" or "No."

Answer: No

QUESTION NO. 7

Did Terry Welch commit assault against Michelle Ivey?

A person commits assault if he (1) intentionally, knowingly, or recklessly causes bodily injury to another; (2) intentionally or knowingly threatens another with imminent bodily injury; or (3) intentionally or knowingly causes physical contact with another when he or she knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Answer "Yes" or "No."

Answer: Yes

If your answer to Question No. 7 is "Yes", then answer the following question in regard to Question No. 7. Otherwise, do not answer the following question.

QUESTION NO. 9

On the occasion in question, did Shoreline Restaurant Corporation d/b/a The Oar House Restaurant ratify the assault(s), if any, committed by Terry Welch upon Michelle Ivey?

"Ratification" means the adoption, confirmation, or failure to repudiate prior unlawful acts which were not legally binding at the time when the defendant had the right and knowledge of facts necessary to repudiate such conduct; but which, by ratification or by failure to repudiate, became the acts of defendant.

Answer "Yes" or "No."

Answer: Yes