

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:97CV-662-H

PAUL BAUSCHKA

PLAINTIFF

V.

LONE STAR STEAKHOUSE &
SALOON OF KENTUCKY, INC.

DEFENDANT

JURY INSTRUCTIONS

Members of the Jury, now that you have heard all of the evidence and the argument of the attorneys, it is my duty to give you instructions as to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply that law to the facts you find from the evidence. Do not to single out one instruction alone as stating the law but you should consider the instructions as a whole. Nor should you be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. You are permitted to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness. In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, frankness or lack of it, and his or her interest in the outcome of the case, if any.

The rules of evidence permit a witness who by education and experience has become expert in any art, science, or profession to state an opinion and the reasons for such an opinion. You should consider this evidence and give it such weight as you, in the application of your common sense, may think it deserves. If you should conclude that the reasons given by the expert witness in support of an opinion are not sound, or that the opinion is outweighed by other credible evidence in the case, or by the opinion of some other expert, then you may reject the opinion of such expert in whole or in part.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

All persons are entitled to equal justice under the law. This applies to corporations, such as the Defendant in this case, as well as individuals. The parties in this case are entitled to your careful deliberation without regard to the fact that one is a corporation and the other is an individual.

In this case it is Plaintiff's responsibility to persuade you that Plaintiff's claim is more likely true than not. If Plaintiff fails to persuade you on every essential element of Plaintiff's

claim, then you should find for the Defendant on that claim.

INSTRUCTION NO. 1

The Kentucky Civil Rights Act provides that, “it is unlawful for a person, or for two or more persons to conspire: To retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this chapter, or because he has made a charge, filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter.”

In this lawsuit, Bauschka claims that his employment with Lone Star Steakhouse & Saloon was terminated in retaliation for opposing an alleged order of his supervisor, District Manager Maloney, to discharge male employees and replace them with females.

If you find that: (1) Defendant ordered Plaintiff to discharge male employees and to replace them with females, AND (2) Plaintiff opposed this order, AND (3) Defendant understood, or could reasonably have understood, that Plaintiff opposed this order, AND (4) Plaintiff’s opposition to this order was a substantial or motivating factor in Defendant’s decision to fire Plaintiff, then you should enter a verdict for Plaintiff on Question 1 on the Verdict Form.

If you do not find each of the above elements, you should enter a verdict for Defendant on Question 1 on the Verdict Form.

If you find for Plaintiff, turn to Instruction No. 2. If you find for Defendant, turn to Instruction No. 3.

INSTRUCTION NO. 2

If you find for Plaintiff, you may award compensatory damages only for injuries that he proves were caused by Defendant's wrongful conduct.

You may award Plaintiff his lost wages and benefits, which is the amount that Plaintiff would have earned working at Defendant from the date of the discharge to the date of your verdict. You may include in the amount all forms of compensation that the Plaintiff has proven he would have earned, including salary, bonuses, vacation pay, pension, and health insurance. From this amount, you should subtract the total amount that Plaintiff has earned during the same period, in wages, earnings, or other income and benefits.

You may also award Plaintiff damages for emotional distress. Plaintiff is not automatically entitled to damages for emotional distress. In order to be entitled to emotional distress damages, Plaintiff must prove that he has suffered mental anguish, humiliation, embarrassment, or stress, as a consequence of his termination.

Plaintiff had a responsibility to take reasonable action to keep his damages to a minimum. You may take this into account in your determination of damages.

Please enter the amount of your verdict for compensation damages and/or emotional distress, if any, in Question No. 2 on the Verdict Form.

INSTRUCTION NO. 3

The employment agreement between Plaintiff and Defendant contains a “non-solicitation” clause, which states that, “in the event of Manager’s termination of employment with the Corporation, for a period of twenty-four months thereafter such Manager shall not, employ or seek to employ, directly or indirectly any person serving in a managerial position with the Corporation, and/or any affiliated operating companies managed by the Corporation.” Defendant claims that Plaintiff has breached this agreement by soliciting Willie Prymer to come work for O’Charley’s, while Mr. Prymer was still employed by Defendant.

If you find that within twenty-four months of his termination, Plaintiff sought either directly or indirectly to employ Mr. Prymer and that Mr. Prymer was employed in a managerial position with Defendant at the time Plaintiff sought to employ him, then you shall enter a verdict for Defendant. Otherwise you shall enter a verdict for Plaintiff.

Please enter your verdict on Question 3 of the Verdict Form.

INSTRUCTION NO. 4

If you find for Defendant on its claim, you may award damages only for injuries that Defendant proves were caused by Plaintiff's breach of the Non-Solicitation Agreement. The damages that you award must be fair compensation, no more and no less.

Please enter your verdict on Question 4 of the Verdict Form.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate with a view to reach an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.

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DEFENDANT

VERDICT FORM

Question No. 1:

Plaintiff _____

Defendant _____

Question No. 2:

Amount of Compensatory Damages: \$ _____

Amount of Emotional Distress Damages: \$ _____

Question No. 3:

Plaintiff _____

Defendant _____

Question No. 4:

Amount of Compensatory Damages: \$ _____

FOREPERSON

Date: _____