

DEC 18 2024 11:54 am

CAUSE NO. 22-CV-2341

GALVESTON COUNTY, TEXAS
BY W. J. Kelly DEPUTY

KIMBERLY COTTON

Plaintiff,

V.

A&D INTERESTS, INC. D/B/A
HEARTBREAKERS GENTLEMEN'S
CLUB

Defendant.

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IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

56TH JUDICIAL DISTRICT

JURY CHARGE

LADIES AND GENTLEMEN OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experience with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.


Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice or sympathy play any part in your decision.

22 - CV - 2341
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Jury Charge and Verdict
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2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on a decision of at least 10 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS

“Plaintiff” shall mean Kimberly Cotton.

“Defendant” shall mean A&D Interests, Inc., d/b/a Heartbreakers Gentlemen’s Club.

“Incident” refers to the facts, circumstances, and events that Plaintiff alleges to have occurred on or about December 20, 2020 at Heartbreakers Gentlemen’s Club.

QUESTION NO. 1

Did the negligence, if any, of those named below proximately cause the injury in question?

With respect to the condition of the premises, Heartbreakers was negligent if—

1. the condition posed an unreasonable risk of harm, and
2. Heartbreakers knew or reasonably should have known of the danger, and
3. Heartbreakers failed to exercise ordinary care to protect Kimberly Cotton from the danger, by both failing to adequately warn Kimberly Cotton of the condition and failing to make that condition reasonably safe.

“Ordinary care,” means that degree of care that would be used by an owner or occupier of ordinary prudence under the same or similar circumstances.

“Negligence,” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances

“Proximate cause” means a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.

Answer “Yes” or “No” for each of the following:

- | | | |
|----|------------------------|------------|
| 1. | <i>Heartbreakers</i> | <u>NO</u> |
| 2. | <i>Kimberly Cotton</i> | <u>YES</u> |

QUESTION NO. 2

If you answered "Yes" to Question 1 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

For each person you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each:

1.	<i>Heartbreakers</i>	<u>0</u>	%
2.	<i>Kimberly Cotton</i>	<u>100%</u>	%
Total		<u>100%</u>	%

Answer Question No. 3 if you answered "Yes" for Heartbreakers to Question No. 1 and answered:

1. "No" for Kimberly Cotton to Question No. 1 or
2. 50 percent or less for Kimberly Cotton to Question No. 2.

Otherwise, do not answer Question No. 3.

QUESTION NO. 3

What sum of money, if paid now in cash, would fairly and reasonably compensate Kimberly Cotton for her injuries in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

You are instructed that any monetary recovery for lost wages in the past is subject to federal income taxes. Any monetary recovery for other elements of damages listed below are not subject to federal income taxes.

Do not include any amount for any injury or condition that did not result from the occurrence in question.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Kimberly Cotton. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Physical pain sustained in the past.

"Physical pain" means the conscious physical pain experienced by Kimberly Cotton as a result of the occasion in question.

Answer: 0

2. Physical pain that, in reasonable probability, Kimberly Cotton will sustain in the future.

Answer: 0

3. Mental anguish sustained in the past.

"Mental anguish" means the emotional pain, torment, and suffering experienced by Kimberly Cotton as a result of the occasion in question.

Answer: 0

4. Mental anguish that, in reasonable probability, Kimberly Cotton will sustain in the future.

Answer: 0

5. Physical impairment sustained in the past.

“Physical impairment” means the loss of enjoyment of life and includes loss of the injured Plaintiff’s lifestyle. The effect of “physical impairment” must be substantial and extend beyond any pain, suffering, mental anguish, or lost wages.

Answer: 0

6. Physical impairment that, in reasonable probability, Kimberly Cotton will sustain in the future.

Answer: 0

7. Reasonable expenses of necessary medical care incurred in the past.

Answer: 0

8. Reasonable expenses of necessary medical care that, in reasonable probability, Kimberly Cotton, will incur in the future.

Answer: 0

9. Physical disfigurement sustained in the past.

“Disfigurement” has been defined as ‘that which impairs or injures the beauty, symmetry, or appearance of a person ... that which renders unsightly, misshapen or imperfect, or deforms in some manner.’”

Answer: 0

10. Physical disfigurement that, in reasonable probability, Kimberly Cotton will sustain in the future.

Answer: 0

11. Lost wages in the past.

Answer: 0

12. Loss of earning capacity that, in reasonable probability, Kimberly Cotton will sustain in the future.

Answer: 0

INSTRUCTIONS UPON RETIRING TO THE JURY ROOM

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

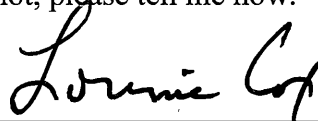
Do you understand the duties of the presiding juror? If you do not, please tell me now.

INSTRUCTIONS FOR SIGNING THE VERDICT CERTIFICATE:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.

If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.



LONNIE COX
Judge Presiding

12/18/2024

DATE AND TIME SIGNED:

DEC 18 2024 3:21 p.m.

VERDICT CERTIFICATE

GALVESTON COUNTY, TEXAS
BY UCC DEPUTY

Check one:

Our Verdict is unanimous. All twelve (12) of us have agreed to each and every answer. The Presiding Juror has signed the certificate for all twelve (12) of us.

Kelsey Bender
Signature of Presiding Juror

Kelsey Bender
Printed Name of Presiding Juror

OR

Our Verdict is not unanimous. Ten (10) of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE	NAME PRINTED
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
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