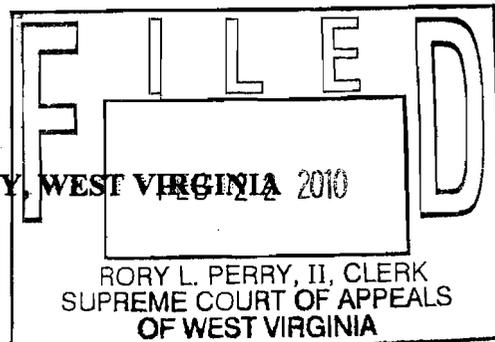


35544



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

JAMIE BACHIE,

Plaintiff,

VS.

CIVIL ACTION NO. 05-C-466

WHEELING ISLAND GAMING, INC., d/b/a WHEELING ISLAND RACETRACK & GAMING CENTER, and MARK WEST, individually,

Defendants.

BRENDAL L. MILLER
 2009 NOV 20 PM 4 41
 CIRCUIT COURT
 OF OHIO COUNTY

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTIONS TO RECONSIDER

On the 24th day of March, 2009, came the Plaintiff, Jamie Bachie, by her counsel, Theodore L. Tsoras and the Robinson Law Offices, and came the Defendants, Wheeling Island Gaming, Inc. and Mark West, by their counsel, William A. Kolibash, Richard N. Beaver and the law firm of Phillips, Gardill, Kaiser, & Altmeyer, pursuant to this Court's Order, for a Hearing on Defendants' Motion for Summary Judgment; Plaintiff's Motion to Reconsider and Rescind the Order of the Court Granting Defendants' Motion in Limine to Exclude Evidence of Alleged Emotional Distress and Plaintiff's Motion to Reconsider and Rescind the Order of the Court Granting Defendants' Motion in Limine to Exclude Evidence of Alleged Lost Wages; and Evidentiary Hearing on Rule 404(b) WVRE testimony.

WHEREUPON, the Plaintiff, by counsel, presented her Motion to Reconsider and Rescind the Order of the Court Granting Defendants' Motion in Limine to Exclude Evidence of Alleged Emotional Distress and hearing argument from counsel for the parties on the same, the Court hereby DENIES the Motion because Plaintiff has not properly disclosed the necessary

COPY

expert witness, and other evidence, pursuant to Defendants' discovery requests and Court deadlines to prove a claim for emotional damages.

WHEREUPON, the Plaintiff, by counsel, presented her Motion to Reconsider and Rescind the Order of the Court Granting Defendants' Motion in Limine to Exclude Evidence of Alleged Lost Wages and hearing argument from counsel for the parties on the same, the Court hereby **DENIES** the Motion because Plaintiff has not properly disclosed the necessary documents and witnesses, expert or otherwise, pursuant to Defendants' discovery requests and Court deadlines to prove a claim for lost wage damages.

WHEREUPON, the Defendants, by counsel, presented their Motion for Summary Judgment and hearing argument from counsel for the parties on the same and considering its Rulings **GRANTING** Defendants Motions in Limine due to Plaintiff not being properly prepared for trial, the Court hereby **GRANTS** the Motion for Summary Judgment for reasons as follows:

1. The evidence submitted to the Court by Plaintiff in response to Defendants' Motion for Summary Judgment is insufficient to present a triable issue of fact to the jury on Plaintiffs' claim for *quid pro quo* sexual harassment and therefore Defendants are entitled to Summary Judgment on that claim.

2. Plaintiff submitted no evidence to the Court in response to Defendants' Motion for Summary Judgment on Plaintiffs' claim for intentional infliction of emotional distress; therefore, no triable issue of fact exists for the jury to consider on Plaintiffs' claim for intentional infliction of emotional distress and therefore Defendants are entitled to Summary Judgment on that claim.

3. Plaintiff submitted no evidence to the Court in response to Defendants' Motion for Summary Judgment on Plaintiffs' claim for negligent hiring/supervision; therefore, no triable issue of fact exists for the jury to consider on Plaintiffs' claim for negligent hiring/supervision and therefore Defendants are entitled to Summary Judgment on that claim.

4. Although the Court believes that there is a triable issue of fact on Plaintiff's hostile work environment sexual harassment claim, Plaintiff will be unable to prove emotional distress and lost wage damages because of the Court's previous Rulings **GRANTING** Defendants Motions in Limine as follows: (1) to Exclude Evidence of Alleged Emotional Distress due to Plaintiff's failure to properly disclose an expert witness and respond to Defendants' written discovery requesting production of evidence regarding the same; (2) to Prevent the Testimony of Plaintiff's Expert Leigh Huggins and/or "Kathy" due to Plaintiff's failure to properly disclose an expert witness and respond to Defendants' written discovery requesting production of all treatment records of Plaintiff; and (3) to Exclude Evidence of Alleged Lost Wages due to Plaintiff's failure to disclose an appropriate expert witness regarding future lost wage damages and to respond to Defendants' written discovery requesting production of evidence regarding the lost wage damages.

5. The Court's previous Rulings **GRANTING** Defendants Motions in Limine, as discussed above, also necessitates the **GRANTING** Summary Judgment in favor of Defendants on Plaintiffs' claims for *quid pro quo* sexual harassment, intentional infliction of emotional distress and negligent hiring/supervision inasmuch as Plaintiff is unable to produce any evidence of damages in this case.

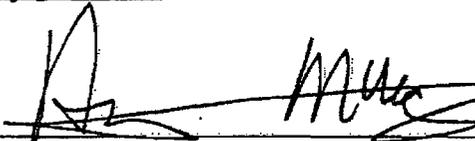
WHEREUPON, the Court further finds that the Evidentiary Hearing set to commence on March 24, 2009 on the issues raised by Defendants in their Motion in Limine and Memorandum

to Prohibit the Admission of Rule 404(b) Evidence and issues related to Plaintiff's criminal history as well as objections to exhibits and any other matter remaining before trial to be **MOOT** due to the **GRANTING** of Summary Judgment in Defendants' favor.

The Court hereby notes the parties' exceptions and objections to the foregoing rulings.

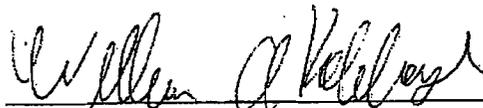
The Clerk is **ORDERED** transmit attested copies of this Order to all counsel of record.

ENTERED this 20 day of November, 2009.



HON. ARTHUR M. RECHT, JUDGE

SEEN AND APPROVED BY:



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A copy, Teste:



Circuit Clerk