

Faye Davis

12-35125-CA-01

vs

Miami Dade County FI

INTRODUCTION

Members of the jury, you have now heard and received all of the evidence in this case. I am now going to tell you about the rules of law that you must use in reaching your verdict.

When I finish telling you about the rules of law, the attorneys will present their final arguments and you will then retire to decide your verdict.

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CLERK OF DISTRICT COURT
CLERK'S OFFICE

The Duty to Follow Instructions – Government Entity or Agency Involved

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

The fact that a governmental entity or agency is involved as a party must not affect your decision in any way. A governmental agency and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a governmental agency is involved, of course, it may act only through people as its employees; and, in general, a governmental agency is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the governmental agency.

GREATER WEIGHT OF THE EVIDENCE

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case.

WEIGHING THE EVIDENCE

In deciding this case, it is your duty as jurors to answer certain questions I ask you to answer on a special form, called a verdict form. You must come to an agreement about what your answers will be. Your agreed-upon answers to my questions are called your jury verdict.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence and all facts that were admitted or agreed to by the parties, and any fact of which the court has taken judicial notice. The Court has taken judicial notice of Florida Statute, §121.091(13) as to "Deferred Retirement Option Program," or DROP.

In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. And, you must always apply the law as I have explained it to you.

BURDEN OF PROOF ON CLAIM

If the greater weight of the evidence does not support the claim of Captain Davis then your verdict should be for the County.

However, if the greater weight of the evidence supports the claim of Captain Davis, then you shall consider the defenses raised by the County.

If the greater weight of the evidence supports the defense, your verdict should be for County. However, if the greater weight of the evidence does not support the defense, your verdict should be for Captain Davis and against the County.

BELIEVABILITY OF WITNESSES

Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

MULTIPLE CLAIMS, NUMEROUS PARTIES, CONSOLIDATED CASES

In your deliberations, you will consider and decide three distinct claims. The first claim is for race discrimination, the second claim is for gender discrimination, and the third claim is for retaliation. Although these claims have been tried together, each is separate from the other, and each party is entitled to have you separately consider each claim as it affects that party. Therefore, in your deliberations, you should consider the evidence as it relates to each claim separately, as you would had each claim been tried before you separately.

LEGAL CAUSE – DAMAGES

The failure to promote is the legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such damage, so that it can reasonably be said that, but for the failure to promote, the loss, injury or damage would not have occurred.

SUMMARY OF CLAIMS AND DEFENSES

The claims in this case are as follows: Faye Davis claims that Miami-Dade County discriminated against her on the basis of her race and sex when she was not promoted to the position of Chief Fire Officer ("CFO") from the 2009-10 Eligible List and the 2010-11 Eligible List.

Faye Davis further claims that her lack of promotion to the position of CFO from the 2009-10 Eligible List and the 2010-11 Eligible List was in retaliation for engaging in protected activity, causing her damage.

Miami-Dade County denies Faye Davis's claims and asserts that it had legitimate, nondiscriminatory, non-retaliatory reasons for not promoting her, including the use of a race- and gender-neutral promotional process that treated all candidates the same.

The parties must prove all claims and defenses by the greater weight of the evidence. I will now define some of the terms you will use in deciding this case.

ISSUES ON PLAINTIFF'S CLAIM

The issues you must decide on the claim of Ms. Davis against Miami-Dade County are whether Miami-Dade County discriminated against Ms. Davis by failing to promote her because of her race or sex, and if so, whether the failure to promote was a legal cause of loss, injury or damage to Ms. Davis.

The law also prohibits an employer from retaliating against an employee for engaging in protected activity.

The next issue you must decide on the claim of Ms. Davis against Miami-Dade County is whether Miami-Dade County retaliated against Ms. Davis by failing to promote her because she engaged in protected activity and, if so, whether the failure to promote was a legal cause of loss, injury or damage to Ms. Davis.

Discrimination – Florida Civil Rights Act

In this case, Faye Davis claims that Miami-Dade County violated the Federal Civil Rights statutes that prohibit employers from discriminating against employees in the terms and conditions of employment because of their race or sex.

Specifically, Faye Davis claims that Miami-Dade County denied a promotion to her because of her race or sex.

Miami-Dade County denies Faye Davis's claims and asserts that it had legitimate non-discriminatory reasons for not promoting her, including the use of a race- and gender-neutral promotional process that treated all candidates the same.

To succeed on her claim against Miami-Dade County, Faye Davis must prove each of the following facts by the greater weight of the evidence:

First: Miami-Dade County denied a promotion in 2009-10 or 2010-11 to Faye Davis; and

Second: Faye Davis's race or sex was a motivating factor that prompted Miami-Dade County to deny Faye Davis a promotion.

In the verdict form that I will explain in a moment, you will be asked to answer questions about these factual issues.

If you find that Miami-Dade County denied Faye Davis a promotion, you must decide whether Faye Davis's race or sex was a "motivating factor" in the decision.

To prove that race or sex was a motivating factor in Miami-Dade County's decision, Faye Davis does not have to prove that her race or sex was the only reason that Miami-Dade County denied her a promotion. It is enough if Faye Davis proves that race or sex influenced the decision. If Faye Davis's race or sex made a difference in Miami-Dade County's decision, you may find that it was a motivating factor in the decision.

Miami-Dade County claims that Faye Davis's race or sex was not a motivating factor in the decision and that it did not promote Faye Davis for another reason. An employer may not discriminate against an employee because of the employee's race or sex, but the employer may decline to promote an employee for any other reason, good or bad, fair or unfair. If you believe Miami-Dade County's reason for the decision not to promote Faye Davis, and you find that Miami-Dade County's decision was not motivated by Faye Davis's race or sex, you must not second guess Miami-Dade County's decision, and you must not substitute your own judgment for Miami-Dade County's judgment – even if you disagree with it.

As I have explained, Faye Davis has the burden to prove that her race or sex was a motivating factor in Miami-Dade County's decision not to promote Faye Davis. I have explained to you that evidence can be direct or circumstantial. To decide whether Faye Davis's race or sex was a motivating factor in Miami-Dade County's decision not to promote Faye Davis, you may consider the circumstances of Miami-Dade County's decision. For example, you may consider whether you believe the reason Miami-Dade County gave for the decision. If you do not believe the reason it gave for the decision, you may consider whether the reason was so unbelievable that it was a cover-up to hide the true discriminatory reasons for the decision.

If you find in Faye Davis's favor for each fact she must prove, you must consider Faye Davis's compensatory damages.

Retaliation – Florida Civil Rights Act

In this case, Faye Davis claims that Miami-Dade County retaliated against her because she took steps to enforce lawful rights under the Florida Civil Rights Act.

Laws that prohibit discrimination in the workplace also prohibit an employer from taking any retaliatory action against an employee because the employee has asserted rights or made complaints under those laws.

An employee may make a discrimination complaint as a means to enforce what she believed in good faith to be lawful rights of herself or others. So, even if a complaint of discrimination against an employer is later found to be invalid or without merit, the employee cannot be penalized in retaliation for having made such a complaint if you find that the employee made the complaint as a means of seeking to enforce what the employee believed in good faith to be lawful rights. To establish "good faith," however, it is insufficient for Faye Davis merely to allege that her belief in this regard was honest and bona fide; the allegations and the record must also establish that the belief, though perhaps mistaken, was objectively reasonable.

Faye Davis claims that Miami-Dade County denied her a promotion because she opposed discrimination or complained about discrimination.

Miami-Dade County denies Faye Davis's claim and asserts that it denied her a promotion for a legitimate non-retaliatory reason, including the use of a race- and gender-neutral promotional process that treated all candidates the same.

To succeed on her claim, Faye Davis must prove each of the following facts by a preponderance of the evidence:

First: Faye Davis engaged in a protected activity;

Second: Miami-Dade County then took an adverse employment action;

Third: Miami-Dade County took the adverse employment action because of Faye Davis's protected activity; and

Fourth: Faye Davis suffered damages because of the adverse employment action.

In the verdict form that I will explain in a moment, you will be asked to answer questions about these factual issues.

For the first element, Faye Davis claims that she engaged in protected activity when she complained about or opposed discrimination. That action is "protected activity" if it was based on Faye Davis's good-faith, reasonable belief that Miami-Dade County discriminated against her or another employees because of race or sex. Faye Davis had a "good faith" belief if she honestly believed that Miami-Dade County discriminated against her or another employee because of race or sex. Faye Davis had a "reasonable" belief if a reasonable person would, under the circumstances, believe that Miami-Dade County discriminated against her or another employee because of race or sex. Faye Davis does not have to prove that Miami-Dade County actually discriminated against her or another employee because of race or sex. But she must prove that she had a good-faith, reasonable belief that Miami-Dade County did so.

For the second element, Faye Davis claims that Miami-Dade County took an adverse employment action against her when Miami-Dade County denied her a promotion. You must decide whether the denial of a promotion is an adverse employment action.

An "adverse employment action" is any type of action that would have

made a reasonable employee reluctant to make or support a charge of discrimination. Put another way, if a reasonable employee would be less likely to complain about or oppose alleged discrimination because she knew that Miami-Dade County would deny her a promotion, then that action is an adverse employment action. If the employment action would not make it less likely for a reasonable employee to make complaints about or oppose the alleged discrimination, it is not an adverse employment action.

For the third element, if you find that Faye Davis engaged in protected activity and that Miami-Dade County took an adverse employment action against her, you must decide whether Miami-Dade County took that action because of Faye Davis's protected activity. Put another way, you must decide whether Faye Davis's protected activity was the main reason for Miami-Dade County's decision.

To determine that Miami-Dade County took an adverse employment action because of Faye Davis's protected activity, you must decide that Miami-Dade County would not have taken the action had Faye Davis not engaged in the protected activity but everything else had been the same.

Miami-Dade County claims that it did not deny a promotion to Faye Davis because of Faye Davis's protected activity and that it took the action for another reason. An employer may not take an adverse action against an employee because of the employee's protected activity. But an employer may deny a promotion to an employee for any other reason, good or bad, fair or unfair. If you believe Miami-Dade County's reason for its decision, and you find that Miami-Dade County did not make its decision because of Faye Davis's protected activity, you must not second guess that decision, and you must not substitute your own judgment for Miami-Dade County's judgment – even if you do not agree with it.

As I have explained, Faye Davis has the burden to prove that Miami-Dade County's decision to deny her a promotion was because of Faye Davis's protected activity. I have explained to you that evidence can be direct or circumstantial. To decide whether Miami-Dade County's failure to promote Faye Davis was because of Faye Davis's protected activity, you may consider the circumstances of Miami-Dade County's decision. For example, you may consider whether you believe the reasons that Miami-Dade County gave for the decision. If you do not believe the reasons that it gave for the decision, you may consider whether the reasons were so unbelievable that it was a cover-up to hide the true retaliatory reasons for the decision.

For the fourth element, you must decide whether Miami-Dade County's acts were the proximate cause of damages that Faye Davis sustained. Put another way, you must decide, if Miami-Dade County had not denied a promotion to Faye Davis, would these damages have occurred?

If you find that Miami-Dade County's acts were the proximate cause of damages that Faye Davis sustained, you must determine the amount of damages.

UNLAWFUL DISCRIMINATION AND RETALIATION DAMAGES

If you find for Miami-Dade County, you will not consider the matter of damages. But if you find for Ms. Davis, you should award Ms. Davis an amount of money that the greater weight of the evidence shows will fairly and adequately compensate her for such damage, including any such damage as Ms. Davis is reasonably certain to incur in the future. You shall consider the following elements of damages:

- a. net lost wages and benefits from the date of denied promotion to the date of your verdict; and
- b. any mental anguish, loss of dignity, emotional pain experienced in the past or to be experienced in the future. There is no exact standard for measuring such damages. The amount should be fair and just in the light of the evidence.

CLOSING INSTRUCTIONS

Members of the jury, you have now heard all the evidence, my instructions on the law that you must apply in reaching your verdict and the closing arguments of the attorneys. You will shortly retire to the jury room to decide this case. [Before you do so, I have a few last instructions for you.]

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You will have in the jury room all of the evidence that was received during the trial. In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or any other reference materials. Do not investigate the case or conduct any experiments. Do not visit or view the scene of any event involved in this case or look at maps or pictures on the Internet. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial.

You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. These communications rules apply until I discharge you at the end of the case.

If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

Any notes you have taken during the trial may be taken to the jury room for use during your discussions. Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. Your notes are not a substitute for your own memory or that of other jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial.

At the conclusion of the trial, the bailiff will collect all of your notes and immediately destroy them. No one will ever read your notes.

In reaching your verdict, do not let bias, sympathy, prejudice, public opinion, or any other sentiment for or against any party to influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you.

Reaching a verdict is exclusively your job. I cannot participate in that decision in any way and you should not guess what I think your verdict should be from something I may have said or done. You should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you.

Pay careful attention to all the instructions that I gave you, for that is the law that you must follow. You will have a copy of my instructions with you when you go to the jury room to deliberate. All the instructions are important, and you must consider all of them together. There are no other laws that apply to this case, and even if you do not agree with these laws, you must use them in reaching your decision in this case.

When you go to the jury room, the first thing you should do is choose a presiding juror to act as a foreperson during your deliberations. The

foreperson should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

[I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. You must consider each question separately. Please answer the questions in the order they appear. After you answer a question, the form tells you what to do next. I will now read the form to you: (read form of verdict)]

You will be given verdict form, which I shall now read to you:

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you. When you have agreed on your verdict, finished filling out the form, your foreperson must write the date and sign it at the bottom and return the verdict to the bailiff.

CONCLUDING INSTRUCTION (BEFORE FINAL ARGUMENT)

That is the law you must follow in deciding this case. The attorneys for the parties will now present their final arguments. When they are through, I will have a few final instructions about your deliberations.

If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split or the reason for the communication.

You may now retire to decide your verdict.