

# In the United States Bankruptcy Court

## for the Northern District of Iowa

---

ROBERT BUTNER, JR. and DARLENE BUTNER  
Debtors.

Bankruptcy No. 92-42290XM  
Chapter 7

---

### ORDER RE: MOTION TO COMPROMISE CLAIM

---

The matter before the court is the trustee's motion to compromise the claim of Darlene Butner against Iowa Mold Tooling Co. (IMT). Hearing was held on October 18, 1993 in Mason City, Iowa. The court now issues its findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2) (O).

Darlene and Robert Butner filed a joint chapter 7 petition on December 14, 1992. The schedule of personal property listed a claim pending in Hancock County by Darlene Butner against IMT, her former employer, for sex discrimination. On February 22, 1993, the trustee filed a motion to sell the property, indicating that IMT intended to buy the lawsuit for not less than \$1,000.00. Darlene Butner objected to the sale. After hearing, the court found the proposed sale was effectively a compromise of the claim and required the trustee to show the compromise was in the best interest of the estate.

The trustee filed an amendment to the motion to sell property on October 1, 1993. The amendment disclosed that IMT had made a formal offer to settle the claim for \$7,500.00. Butner objected to the amended motion.

At the hearing on the motion, the court heard the testimony of Rhonda Ruter, formerly known as Rhonda Pinneke, assistant personnel manager at IMT; David Stevenson, former personnel manager at IMT; attorney Philip Garland; and Darlene Butner. The trustee also offered the deposition of Darlene Butner as Exhibit A. (Certain discovery took place post-petition without the knowledge of the trustee. Darlene Butner's deposition was taken February 2, 1993.)

Attorney Garland evaluated the claim by reviewing the depositions of Butner, Ruter and Stevenson given to him by the trustee, and by discussing the case with the trustee and with counsel for IMT. The depositions of Ruter and Stevenson were not offered into evidence. While Garland has given some seminars on sexual discrimination, he has never handled a sexual discrimination case in his law practice. Garland practices in Garner, Iowa, the same community in which IMT is located. Garland does not know Butner but knows and has done legal work for some of the management personnel involved in the case. Garland did legal work for IMT as recently as May or June of 1993. Garland concluded that Butner's chances of prevailing on the merits if the case were tried were not very good and that the offer of \$7,500.00 was reasonable.

Rhonda Ruter testified that Darlene Butner's supervisors in 1985 were Dan Beyer and Richard Haberkamp. Ruter testified that Butner complained to her about problems between the day shift and night shift but never made any mention of sexual harassment by Dan Beyer. Ruter also stated that Butner's employment records do not contain any allegations or complaint of sexual harassment. Ruter also testified that the decision to eliminate Butner's job was made by top management because of economic conditions and that Dan Beyer played no part in the decision.

Stevenson testified that Beyer and Butner held corresponding positions in the body weld department. Beyer was day shift supervisor, and Butner was night shift supervisor. Stevenson said that Butner made no mention of sexual discrimination or sexual harassment at any time that she worked there. Stevenson testified that Butner's position was not eliminated because of Butner's job performance and that there were no complaints about her work. Stevenson also testified that Butner's position was eliminated for economic reasons and that Dan Beyer played no part in the decision.

Darlene Butner worked at IMT for 12 years. She started there in 1978 as a body department welder. In 1985, she was promoted to night supervisor of the body weld department. In November, 1990, Butner's job was eliminated. Her ending salary was approximately \$30,000.00. In January, 1992, IMT made Butner a recall offer as a welder for approximately \$9.00 an hour. Butner had a back injury at the time and was unable to work. Butner testified she obtained a medical release approximately a month later, but when she called IMT, she was told there was no job for her. Butner is now working as a saw operator for Cole-Sewell Corporation in Clear Lake for approximately \$6.40 an hour.

Butner's complaint against IMT is in two counts. She claims she received differential treatment because of her gender in the opportunities available to her on her job and in opportunities for recall to work. She also claims she was subjected to sexual harassment that created a hostile or offensive working environment at IMT. Differential treatment on the basis of gender and sexual harassment are types of sex discrimination prohibited by Iowa Code § 601A.6 and Title VII of the Civil Rights Act of 1964.

Butner's factual allegations, taken from her testimony at the hearing and her deposition, are summarized as follows. Butner's problems began when she was promoted to the night shift as body weld supervisor. Dan Beyer had the corresponding job on day shift. Dan Beyer was opposed to Butner having the job because she was a woman. Beyer told others at IMT that no woman is worth that kind of money. Exhibit A, pp. 57-58, 114. Beyer began making it difficult for Butner to perform her job. Beyer began calling her names such as "stupid bitch" and "dumb broad" to her face. Exhibit A, pp. 34, 72, 78. Butner complained about the abusive language to both Stevenson and Ruter. Exhibit A, pp. 36, 39, 46-47, 48. Beyer was reprimanded for his conduct. Exhibit A, p. 57. Beyer continued calling her "young lady" in a demeaning manner until the end of her employment at IMT. Exhibit A, p. 35. Beyer hampered her efforts to perform her work, then criticized her for not "pulling her weight." Exhibit A, pp. 61-62. Beyer withheld information that was necessary for her to perform her job. Exhibit A, p. 43. He blamed the night shift for errors that were made on the day shift. Exhibit A, p. 109. He made the night shift do all the "rework" from both shifts which made it difficult for her to meet production goals. Exhibit A, p. 50, 51-52. Butner complained to several people at IMT about the problems she was having but got little response. Exhibit A, pp. 40, 46, 50. Beyer was eventually promoted to department manager and given increased authority over Butner as night supervisor. Exhibit A, pp. 60, 75. This change was seen as a threat to her job. Another supervisor commented to Butner that she would be lucky to last six months with Beyer as her boss. Exhibit A, p. 60. Butner believed she was going to lose her job and began taking notes about incidents at work. Exhibit A, p. 69. She was treated differently from male supervisors in the terms of her work. Exhibit A, pp. 45, 92. She was not given or even told of other opportunities within the company even after management knew she wanted to transfer away from Beyer. Exhibit A, pp. 76-77, 87, 97, 110. Beyer and others undermined her authority as a supervisor. Exhibit A, pp. 42, 81-82, 89. A management employee criticized Butner for interviewing a woman for a welding position. Exhibit A, pp. 41, 93. Butner was denied a change of position because a management employee thought that steel vendors would not want to deal with a woman. Exhibit A, p. 94. After her job was eliminated, Butner was not given the same opportunities as others or made aware of opportunities to be recalled. Exhibit A, p. 101.

In order to obtain approval of a compromise of a claim, the trustee must show that the compromise is in the best interests of the estate. This determination is made by considering the following factors:

1. The probability of success in the litigation;
2. The difficulties, if any, to be encountered in the matter of collection;
3. The complexity of the litigation involved, and the expenses, inconvenience and delay necessarily attending it;
4. The paramount interest of creditors and proper deference to their reasonable views.

In re Carson, 82 B.R. 847, 853 (Bankr. S.D. Ohio 1987) citing Drexel v. Loomis, 35 F.2d 800 (8th Cir. 1929). The court need not determine that a settlement is the best that could be obtained. Rather, the court must decide whether the settlement "falls below the lowest point in the range of reasonableness." Carson, 82 B.R. at 853, citing In re W. T. Grant Co., 699 F.2d 599, 613 (2d Cir. 1983), cert. denied sub nom Cosoff v. Rodman, 464 U.S. 822, 104 S.Ct. 89 (1983).

The primary dispute in the matter before the court is the probability of Butner's success on the merits if the case were to proceed to trial. The trustee apparently has accepted IMT's assessment of Butner's claim. IMT believes Butner would have little chance of success if the case were tried. IMT made a \$15,000.00 "cost of litigation" settlement offer in

October, 1992. Certain discovery continued during the bankruptcy without the trustee's knowledge. The trustee represents that IMT's present offer of \$7,500.00 is similar to the previous offer in that it represents IMT's estimate of its remaining costs of litigation. The trustee argues that because of Butner's small chance of success on the merits, the offer is reasonable.

A large part of the trustee's argument is that Butner communicated her sex discrimination allegations to only two people, Ruter and Stevenson. Both of them denied that Butner ever made a "sexual harassment" or "sexual discrimination" claim, and no such allegations appear in her employment records. The court assumes that the trustee is arguing either that IMT did not have sufficient notice of the alleged conduct to be held liable for employees' actions or that Butner did not identify work problems that were gender-related.

If the trustee's argument is that IMT did not have sufficient notice of Butner's claim, it is a legal question to what extent notice is necessary for Butner to prevail. Butner's allegations include complaints about the conduct of supervisory personnel. A sexual harassment action based on conduct by co-workers requires that an employee bring the problem to the attention of management. A company cannot be held liable for an isolated insulting comment by a co-worker. Hall v. Gus Construction Co., Inc., 842 F.2d 1010, 1015 (8th Cir. 1988). An employer is liable for discriminatory sexual harassment if "the employer knew or should have known of the harassment in question and failed to take remedial action." Id. at 1013.

However, a company may be liable for acts of employment discrimination by supervisory personnel whether or not a plaintiff gives specific notice of the discriminatory conduct. Meritor Savings Bank, F.S.B. v. Vinson, 477 U.S. 57, 70-72, 106 S.Ct. 2399, 2407-08 (1986); Hall v. Gus Construction, 842 F.2d at 1015. A company is liable for the actions of a supervisor whether or not the employer knows or approves of the supervisor's action when the supervisor is acting in the capacity of agent for the company. Meritor, 477 U.S. at 70-71, 106 S.Ct. at 2407. The Supreme Court in Meritor declined to rule that a company is automatically liable for supervisory conduct creating a discriminatory hostile environment, but stated that "absence of notice to an employer does not necessarily insulate that employer from liability." Meritor, 477 U.S. at 72, 106 S.Ct. at 2408. Sexual harassment by supervisory personnel may be "automatically imputed to the employer when the harassment results in tangible job detriment to the subordinate employee." Meritor, 477 U.S. at 76, 106 S.Ct. at 2410 (Marshall, J., concurring) (citing decisions in five circuits).

In any event, Butner has alleged she notified several management level employees of work problems she believed were based on discriminatory conduct. In the context of questioning about abusive language from Beyer, Butner testified at the hearing that she complained about sexual harassment to Ruter and Stevenson. This is consistent with her deposition testimony. Exhibit A, p. 52. Butner also testified in her deposition that she complained to other management, including the plant manager, about other problems. Exhibit A, pp. 40, 46, 50.

The trustee may also be claiming that Butner has not identified gender-related problems. Ruter testified that the problem between the day shift and night shift was an on-going problem throughout the plant. Although it is not clear that either Stevenson or Ruter were involved in the decision to eliminate Butner's job, both testified that the decision was based purely on economics. The predicate acts underlying a sexual harassment claim need not be clearly sexual in nature. Hall v. Gus Construction, 842 F.2d at 1014. The plaintiff must show that the conduct would not have occurred but for the sex of the employee. Id. (finding trial court properly considered failure to fix a truck used by female employees as part of a sexual harassment claim). It is not necessarily a defense that an employee's objectionable conduct affects male as well as female employees. In Lynch v. City of Des Moines, 454 N.W.2d 827, 834 (Iowa 1990), the city argued it was not liable for sexual harassment because the employee complained of "used obscene language all the time to everyone." The Iowa Supreme Court upheld the trial court's finding that but for the fact that the plaintiff was a woman she would not have been subjected to such pervasive harassment. Butner has made several factual allegations that raise the inference that her problems at work were gender-related. She also claims that certain conduct was motivated by sexual discrimination even though the conduct itself was not sexual in nature. See Exhibit A, pp. 63, 98-99.

Butner's factual allegations state a cause of action for sex discrimination under the differential treatment and sexual harassment theories. See Meritor, 477 U.S. at 63, 106 S.Ct. at 2404 (quoting Title VII); Hall v. Gus Construction, 842 F.2d at 1013 (elements of sexual harassment claim). If the case went to trial, it would be a question for the jury whether Butner proved the elements of her case. The trustee brought attorney Garland to testify regarding Butner's likelihood of

success on the merits. The court gives little weight to Garland's testimony. Although he stated he has participated in seminars on sexual discrimination, Garland has never handled such a case in his law practice. The court believes that an attorney obtains the best sense of the value of a particular type of case from the experience of actually litigating those cases. See In re Carson, 82 B.R. 847, 854 (Bankr. S.D. Ohio 1987) (court gave greater weight to assessment by trustee's special counsel, specialists in the litigation of employment discrimination cases).

Butner estimated that \$40,000.00 would be a reasonable settlement. Butner had no basis for her figure either, but the court will not completely discount her opinion. The court calculates that after payment of all of Butner's unsecured debts and trustee fees, a settlement of \$40,000.00 would allow a recovery for her. Butner stated in her brief objecting to the trustee's first notice of sale that she sought \$59,500.00 for back pay and loss of benefits, \$12,500.00 for emotional distress, and damages for loss of future employment opportunities. Docket no. 21.

The court concludes that insufficient evidence was presented as to the value of Butner's claim against IMT. The trustee has not shown that the settlement is reasonable and in the best interest of creditors.

### **ORDER**

IT IS ORDERED that the trustee's motion to compromise the claim of Darlene Butner against Iowa Mold Tooling is denied. Judgment shall enter accordingly.

SO ORDERED ON THIS 8th DAY OF NOVEMBER, 1993.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on \_\_\_\_\_ I mailed a copy of this order by U. S. mail to: Candy Morgan, M. Wayne Oltrogge, Larry S. Eide and U. S. Trustee.