

2002-53262  
NO. 01CV0767

P6  
P  
8DC  
8A  
D  
E  
HARRIS COUNTY, TEXAS  
157<sup>TH</sup> JUDICIAL DISTRICT  
CHARLES BACARISSE  
District Clerk  
Harris County, Texas  
By Deputy

OCT 29 2003

KATHRYN SPICKER

VS.

RAY CAMMACK SHOWS, INC. and  
HOUSTON LIVESTOCK SHOW  
AND RODEO, INC.

IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
157<sup>TH</sup> JUDICIAL DISTRICT

### FINAL JUDGMENT

On September 22, 2003, the court called this case for trial. Plaintiff KATHRYN SPICKER, appeared in person and through her attorney and announced ready for trial. Defendant, RAY CAMMACK SHOWS, INC. appeared in person and through its representative and through its attorney and announced ready for trial.

After a jury was impaneled and sworn, it heard the evidence and arguments of counsel. In response to the jury charge, the jury made findings that the court received, filed and entered of record. The questions submitted to the jury and the jury's findings are as follows:

#### **QUESTION 1**

Was the negligence , if any, of those named below a proximate cause of the occurrence in question?

With respect to the condition of the premises, the Defendant was NEGLIGENT if -

- A. The condition posed an unreasonable risk of harm, and
- B. The Defendant knew or reasonably should have known of the danger, and
- C. The Defendant failed to exercise ordinary care to protect KATHRYN SPICKER from the danger, by both failing to adequately warn KATHRYN SPICKER of the condition and failing to make that condition reasonably safe.

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
and not satisfactory for photographic  
recordation; and/or alterations were  
present at the time of imaging

"Ordinary Care," when used with respect to the conduct of Defendant as an owner or operator of a premises, means that degree of care that would be used by an owner or operator of ordinary prudence under the same or similar circumstances.

"NEGLIGENCE," when used in respect to KATHRYN SPICKER means failure to use ordinary care; that is, failure 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 that cause which, in a natural and continuous sequence, produces an event, and without which cause such event 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 event, or some similar event, might reasonably result therefrom.

An occurrence may be an "unavoidable accident" that is, an event not proximately caused by the negligence of any party to it.

Answer "Yes" or "No" for each of the following:

RAY CAMMACK SHOW Yes

KATHRYN SPICKER Yes

If you have answered "Yes" as to either party in Question 1 for those named below, then answer the following question. Otherwise, do not answer the following question. .

#### **QUESTION NO. 2**

What percentage of the negligence that caused the occurrence do you find to be attributable to each of those found by you, in your answers to Question No. 1, to have been negligent?

The percentages you find must total 100 percent. The negligence attributable to any one named below is not necessarily measured by the number of acts or omissions found.

RAY CAMMACK SHOWS 60%

KATHRYN SPICKER 40%

Total 100%

If in answer to Question No. 1, you have answered "Yes" as to Ray Cammack Shows

only or if in answer to Question No. 2 you have found 50% or less as to Kathryn Spicker, then answer the following question. Otherwise do not answer the following question.

### **QUESTION NO. 3**

What sum of money, if any, if paid now in cash would fairly and reasonably and compensate KATHRYN SPICKER for injuries fairly that resulted from the occurrence in question. Consider each element separately. Do not include damages for one element in any other element. Do not include interest on any damage you find.

Do not reduce the amount, if any, in your answer because of the negligence, if any, of KATHRYN SPICKER.

Answer separately in dollars and cents, if any, with respect to each of the following elements:

#### **A. Physical pain and mental anguish for KATHRYN SPICKER.**

- 1) Sustained in the past: ANSWER:\$25,000
- 2) In reasonable probability, will be sustained in the future: ANSWER: \$20,000

#### **B. Reasonable and necessary costs of medical care for KATHRYN SPICKER.**

- 1) Sustained in the past: ANSWER: \$32,000
- 2) In reasonable probability, will be sustained in the future: ANSWER: \$ 16,000

#### **C. Disfigurement for KATHRYN SPICKER.**

- 1) Sustained in the past: ANSWER: \$ 0
- 2) In reasonable probability, will be sustained in the future: ANSWER: \$ 0

#### **D. Physical impairment for KATHRYN SPICKER.**

1) Sustained in the past: ANSWER: \$10,000

2) In reasonable probability, will be sustained in the future: ANSWER: \$ 5,000

1. The court renders judgment for Plaintiff. The Court finds that the total damages awarded of \$108, 000 is supported by the evidence. The Court finds it must reduce the damages by forty percent due to the percentage of responsibility found against Kathryn Spicker. Thus, the compensatory damages after reducing them by forty percent are \$64,800.00. The Court orders that Plaintiff, KATHRYN SPICKER, recover from Defendant, RAY CAMMACK SHOWS, INC. the sum of SIXTY FOUR THOUSAND, EIGHT HUNDRED DOLLARS (\$64,800.00), plus prejudgment interest in the amount of \$2,907.03 on the past damages of \$40,200.00 at the annual rate of 10% simple interest. Thus, the total Judgment rendered against this Defendant is SIXTY -SEVEN THOUSAND, SEVEN HUNDRED SEVEN DOLLARS AND THREE CENTS (\$67,707.03) plus post judgment interest on that total sum at the annual rate of 5%, and court costs.

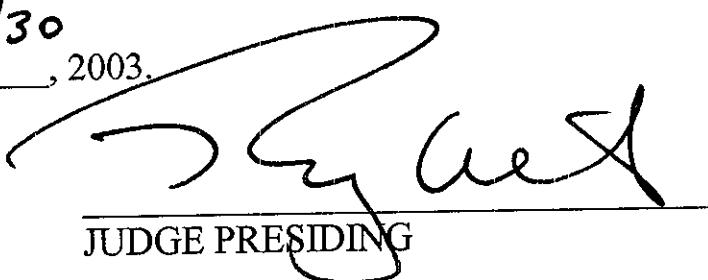
2. As support for its prejudgment interest amounts, the court finds this is a suit for personal injury damages. Thus, prejudgment interest is governed by Texas Finance Code §§304.101, *et seq.* Under §304.104 of the Texas Finance Code, prejudgment interest began to accrue on the earlier of (a) the 180<sup>th</sup> day after the defendant received Plaintiff's September 10, 2002, written notice of the claim, which was March 10, 2003, or (b) the date the suit was filed against defendant, which was October 15, 2002, ending on the day before judgment was rendered, which is October 22, 2003. This is 372 days. *See generally*, Tex. Fin. Code Sec. 303.104. Daily interest equals \$11.17 per day. Total interest for this period is \$4,155.24.

3. The amount of prejudgment interest earned under Texas Finance Code §304.104 is reduced under §304.105 because Defendant made a written settlement offer to Plaintiff on April 4, 2003, in the amount of \$36,000.00, with \$22,333.00 representing Defendant's offer for past damages.. Prejudgment interest did not accrue on the amount of the \$22,333.00 settlement offer during the time the offer was considered because the judgment was more than the amount of the settlement offer. Tex. Fin. Code §304.105. Thus, by multiplying 201 days times \$6.21 interest per day, the Court finds that total interest of \$1,248.21 should be subtracted from the total prejudgment interest earned of \$4,155.24. Thus, Plaintiff is entitled to prejudgment interest of only \$2,907.03.

4. The court orders execution to issue for this judgment.

5. The court denies all relief not granted in this judgment.

SIGNED on 30/04/03, 2003.

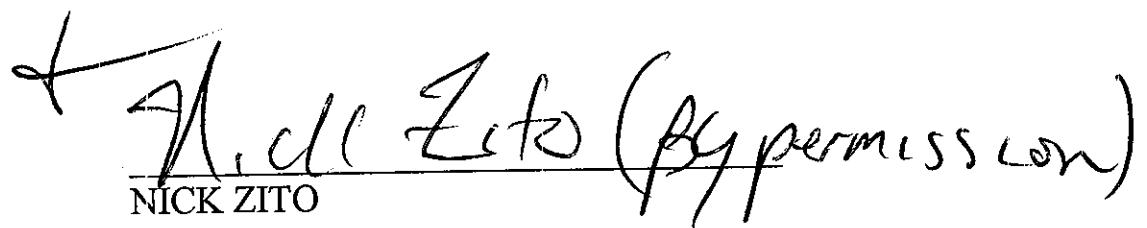
  
JUDGE PRESIDING

APPROVED AS TO FORM:

THE STEPHENS LAW FIRM

  
JOE B. STEPHENS  
State Bar No. 19157300  
440 Louisiana, Suite 2000  
Houston, Texas 77002  
(713) 224-0000  
(713) 224-0055 Fax  
Attorney for Plaintiff

APPROVED AS TO FORM ONLY

  
NICK ZITO (by permission)

NICK ZITO  
Attorney at Law  
State Bar No. 22279500  
5847 San Felipe, Suite 3980  
Houston, Texas 77057  
(713) 266-0074  
(713) 266-1064 – Fax  
**Attorney for the Defendant Ray Cammack Shows, Inc.**