

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-41315  
Summary Calendar

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JUDY BIGPOND,

Plaintiff-Appellant,  
Cross-Appellee,

VERSUS

KWIKSET CORPORATION,

Defendant-Appellee and Cross-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(4:93CV-191)

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(September 25, 1995)

Before DAVIS, BARKSDALE and DeMOSS, Circuit Judges.

PER CURIAM:<sup>1</sup>

In this Equal Pay Act case, plaintiff Bigpond challenges the district court's take-nothing judgment rendered in favor of her employer, Kwikset. We affirm.

The district court submitted this case to the jury on five questions on plaintiff's Equal Pay Act and Title VII claims. Ms. Bigpond has not appealed the adverse judgment on her Title VII

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Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

claim. Bigpond argues that the jury answered the three interrogatories on the Equal Pay Act inconsistently. The three interrogatories were (1) was Bigpond paid less than comparable male workers for the performance of equal work; (2) if so, were any such differentials based on a factor other than sex; and (3) what damages were suffered as a result of the pay differential. The jury then answered question (1) "we do," finding that plaintiff was paid less for comparable work. The jury then answered question number (2) "we do," finding that any pay differential was based on a factor other than sex. The jury then failed to follow the court's instructions and proceeded to question (3) and answered the damage interrogatory. The district court entered judgment for the defendant based on the affirmative answer to interrogatory (2) establishing the defendant's affirmative defense.

We agree with the district court that 29 U.S.C. § 206(d) provides the employer with an affirmative defense to an Equal Pay Act claim where the pay "differential is based on any other factor other than sex." 29 U.S.C. § 206(d)(1)(iv). Bigpond can take no comfort in the jury's decision to answer the damage interrogatory. As we stated in White v. Grinfas, 809 F.2d 1157, 1161 (5th Cir. 1987), if the jury fails to follow a conditional instruction and answers subsequent questions it was instructed not to answer, we review only those questions the jury properly answered.

Because the district court correctly entered judgment on the verdict, its judgment is affirmed.

AFFIRMED.

