

STATE OF MICHIGAN
IN THE COURT OF APPEALS

JOHN CARRUTHERS,

Plaintiff/Appellant

v.

ISRINGHAUSEN, INC.,

Defendant/Appellee.

COA No. 296250

Kalamazoo County Circuit Court
Case No. 09-0127-CZ

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APPELLEE ISRINGHAUSEN'S BRIEF ON APPEAL

EXHIBIT 6

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STATE OF MICHIGAN
IN THE
CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

JOHN CARRUTHERS, an
individual,

Plaintiff,

vs

ISRINGHAUSEN, INC., a
corporation,

Defendant.

HON: GARY C. GIGUERE, JR.

File No. A90-0127-CZ



Deposition of TONYA COLBURN, taken by the Plaintiff
under the provisions of the Michigan Court Rules
before Mary L. Myeno, CSR-2673, RMR, CRR, Certified
Shorthand Reporter and Notary Public, at 3275 Cooley
Court, Portage, Michigan, on Tuesday, August 18,
2009, commencing at or about 10:06 a.m., pursuant to
Notice.

Mini-Size
COPY

MYENO REPORTING
6271 Ormada Drive
Kalamazoo, Michigan 49048
269-385-1868

1 A. I believe it was -- I can't exactly remember the date. I
 2 know my last date for Il Stanley was August 29th, and I
 3 was to start at Isringhausen right after that, so it had
 4 to have been the following Monday.
 5 Q. So late August, early September sometime.
 6 A. Yes.
 7 Q. Do you recall what you did on your first day of
 8 employment at Isringhausen?
 9 A. Weighed parts.
 10 Q. Weighed parts?
 11 A. Yeah. Worked a scale.
 12 Q. Sure, okay. Did you have any orientation or training on
 13 the first day?
 14 A. I was trained on how to use the scale.
 15 Q. Who trained you on that?
 16 A. What was his name? Bill.
 17 Q. Bill King?
 18 A. Yes.
 19 Q. When you were weighing parts, where was that? In the
 20 warehouse or some other location?
 21 A. In the warehouse.
 22 Q. Did anyone explain to you on that first day who your
 23 supervisor was going to be?
 24 A. Joe told me that he was gonna be my supervisor at the
 25 interview.

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1 Q. Did that appear to be the case when you started on the
 2 first day, that he was your supervisor?
 3 A. I didn't talk to him much on my first day.
 4 Q. What did you do the next day, same thing or --
 5 A. Same thing pretty much, go in, weigh parts, get shipments
 6 ready to go out.
 7 Q. How long were you -- did you do the job weighing parts?
 8 A. That was an everyday process.
 9 Q. At some point during your employment were you assigned to
 10 do something other than weighing parts?
 11 A. Umm, took care of stock, paperwork. I had to do
 12 paperwork through the SAP system.
 13 Q. SAP system?
 14 A. Yes.
 15 Q. Do you know what SAP stands for?
 16 A. No.
 17 Q. Okay.
 18 A. I know I used the same system at Lear when I was there.
 19 Q. If you don't know what it stands for, what basically is
 20 the system?
 21 A. It's a processing paperwork through a -- it's linked to
 22 different companies, and they can know what you're doing,
 23 your paperwork and everything, umm, shippers, you make
 24 shippers for different companies and --
 25 Q. So it's basically a standardization system --

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1 A. Yes.
 2 Q. (Continuing) -- that companies use across the board?
 3 A. Yes.
 4 Q. At some point were you assigned to drive a forklift?
 5 A. Yes.
 6 Q. Do you recall when that happened?
 7 A. Probably about after my first week there I was put on a
 8 truck.
 9 Q. How did that come about? I mean, did someone walk up to
 10 you and say, Hey, you're gonna be driving a forklift, or
 11 how do you remember that coming about?
 12 A. Umm, I was told that I -- part of my job was to drive
 13 fork trucks, I had to take care of stock as it came in
 14 off the trucks, and that I had to learn how to drive
 15 their stand-up trucks.
 16 Q. Who told you that?
 17 A. Joe.
 18 Q. Joe Reinheimer?
 19 A. Yes.
 20 Q. So he was the one to -- that assigned you to drive a
 21 forklift?
 22 A. Yeah, he told John to -- John Carruthers to show me how
 23 to drive fork truck.
 24 Q. And when he told John Carruthers to show you how to drive
 25 a forklift, were you all three together in a

13

1 conversation?
 2 A. No.
 3 Q. Okay. How do you know that he told John Carruthers to
 4 tell you how to drive --
 5 A. He told me that John was supposed to show me how to drive
 6 truck.
 7 Q. I see, so were you having a conversation with Joe.
 8 A. Mm-hmm, yes.
 9 Q. And so he directed you to have John Carruthers show you
 10 how to drive a forklift; is that correct?
 11 A. Yes.
 12 Q. So what did you do then?
 13 A. Went over to John and told him I was supposed to learn
 14 how to drive a truck, and if he could watch me, so I
 15 didn't hit anything, make any mistakes.
 16 Q. Did John Carruthers tell you how to drive a forklift?
 17 A. Yes.
 18 Q. What did he, if you can remember, tell you generally what
 19 to do?
 20 A. Well, the stand-up trucks that Isringhausen uses are
 21 different than what I used at Stanley, the controls are
 22 all different. So he showed me how to use the controls,
 23 showed me what was the gas, what was the brake, how to
 24 stop the truck in case of emergency, showed me how to
 25 fill the battery, just general maintenance on it.

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1 it was John Carruthers, that at another job you had that
 2 you used to sleep with your supervisor?
 3 A. My supervisor was my boyfriend at the time.
 4 Q. And what job was that at?
 5 A. At Lear Corporation.
 6 Q. At Lear. It was a different boyfriend, though.
 7 A. Yes.
 8 Q. Okay. I'll ask the same question again: Do you recall,
 9 then, indicating to John or anyone else at Isringhausen
 10 that you used to sleep with your supervisor?
 11 A. Yes.
 12 Q. And do you recall saying that to John Carruthers?
 13 A. Yes.
 14 Q. Do you recall if John had any response to that statement?
 15 A. No.
 16 Q. Do you ever recall in any conversation with John
 17 Carruthers or anyone else at Isringhausen, in discussing
 18 sex, indicating that you're a screamer, or words to that
 19 effect?
 20 A. No.
 21 Q. Do you ever recall indicating to John Carruthers that you
 22 had a boyfriend on the side?
 23 A. No.
 24 Q. Do you ever recall engaging in conversation with anyone
 25 at Isringhausen in which you discussed your views about

1 whether or not prostitution should be legal?
 2 A. No.
 3 Q. Are you denying that you had that conversation, or you
 4 don't remember one way or another?
 5 A. I don't think prostitution should be legal.
 6 Q. So it's not likely you would have said that --
 7 A. No.
 8 Q. (Continuing) -- is that correct? Is that correct?
 9 A. Correct.
 10 Q. Do you recall, after having some conversations with John
 11 Carruthers about sex in early September of 2008, being
 12 approached by anyone from management about that issue?
 13 A. Yes.
 14 Q. And who was it that approached you?
 15 A. Barb Vroman.
 16 Q. Did anyone else approach you?
 17 A. No.
 18 Q. Where were you when she approached you?
 19 A. I was at the desk doing paperwork, and Joe come out and
 20 told me that I had to go see Barb. So I went to see
 21 Barb.
 22 Q. Okay. And where did you see Barb?
 23 A. In her office.
 24 Q. And Barb's last name is Vroman?
 25 A. Yes.

1 Q. When you went into Barb's office, did you have any idea
 2 what it was that you were directed to go there to talk to
 3 her about?
 4 A. No.
 5 Q. When you got there, what did she talk to you about?
 6 A. Umm, that she had some complaints about, umm, my language
 7 and the way I speak to people sexually and stuff, and
 8 told me to knock it off.
 9 Q. Did you -- did she tell you what the consequences would
 10 be if you didn't knock it off, so to speak?
 11 A. She told me that if I didn't stop, that I would be let
 12 go.
 13 Q. Did you in conversations with Barb either admit or deny
 14 that you had been engaged in conversation about sex?
 15 A. No.
 16 Q. So you just listened to her.
 17 A. Yes.
 18 Q. Did she ever ask you whether or not you had actually been
 19 engaged in discussing sex at the workplace?
 20 A. No.
 21 Q. Did you -- strike that. Did she ever tell you any
 22 specifics about the complaints that allegedly had been
 23 made against you?
 24 A. No.
 25 Q. Did she identify who had made complaints?

1 A. No.
 2 Q. At some point in your employment at Isringhausen did you
 3 ever hear who it was that had made the complaints?
 4 A. No.
 5 Q. Did anyone ever speculate with you regarding who it was
 6 that had made the complaints?
 7 A. Yes.
 8 Q. Who did that?
 9 A. I can't remember.
 10 Q. Did anyone suggest to you during that speculation who it
 11 was?
 12 A. Yes.
 13 Q. Who suggested to you who it was?
 14 A. I can't remember names. I haven't been employed there in
 15 seven months.
 16 Q. I understand. All you can do is tell the truth and give
 17 me the best of your recollection. What -- if you don't
 18 remember who the person was, who did the person suggest
 19 that he or she believed were the source of the
 20 complaints?
 21 A. Bill King.
 22 Q. And did the person, whoever it was, indicate to you why
 23 he or she felt that Bill King was the source of the
 24 complaints?
 25 A. No.

1 Q. When you were told that, did you believe it was probably
 2 Bill King that was the source of the complaints?
 3 A. Yes.
 4 Q. Why did you believe that?
 5 A. Because he was acting weird around me.
 6 Q. Is there anyone else who was acting weird around you?
 7 A. No.
 8 Q. Did you think Mr. Carruthers was acting weird around you?
 9 A. No.
 10 Q. Did you think that there was anyone else who was acting
 11 weird around you?
 12 A. No.
 13 Q. Do you recall discussing sex around Bill King, or with
 14 Bill King?
 15 A. No.
 16 Q. Do you recall discussing sex with Mike Adams?
 17 A. Who's Mike Adams?
 18 Q. I guess that answers that question. Do you recall
 19 discussing sex with Anthony Hickey?
 20 A. I don't know who Anthony Hickey is.
 21 Q. How about Rick Short, which I believe the record would
 22 reveal was the individual who you ran into with the fork
 23 truck, do you recall discussing sex with him?
 24 A. Rick and I had mutual conversations about sex.
 25 Q. So your answer to that is yes.

1 A. Yes.
 2 Q. Do you recall discussing sex with Marcus Dixon?
 3 A. No.
 4 Q. How about Terry Walback?
 5 A. Who's -- no.
 6 Q. Okay.
 7 A. I had to stop and think. No.
 8 Q. All right. Do you recall discussing sex with Joe
 9 D'Water?
 10 A. I -- no.
 11 Q. Do you recall discussing sex with Joe Reinheimer?
 12 A. No.
 13 Q. During your employment at Isringhausen do you recall
 14 other people discussing sex in your presence?
 15 A. Yes.
 16 Q. Who else do you recall?
 17 A. Almost everybody.
 18 Q. Do you recall Mr. Carruthers discussing sex in your
 19 presence?
 20 A. Once or twice.
 21 Q. What do you recall him saying?
 22 A. I don't remember. All's I know is it's a factory,
 23 everybody talks about sex, especially a small factory
 24 like that.
 25 Q. Is there anyone specifically you can recall talking about

1 sex?
 2 A. Specifically?
 3 Q. Yes.
 4 A. Rick Short. Umm, John and I used to carry on a mutual
 5 conversation about it but nothing, you know, out of the
 6 ordinary. Bill King once in a blue moon. That was about
 7 it.
 8 Q. Did you ever have a romantic relationship with anyone who
 9 worked at Isringhausen?
 10 A. No.
 11 Q. Did you ever suggest one or did anyone ever suggest one
 12 to you?
 13 A. No.
 14 Q. After Barb Vroman told you to knock it off, or whatever
 15 the specific words were used, do you recall talking about
 16 sex with anyone after that?
 17 A. No.
 18 Q. I need to clarify your response. Are you saying no in
 19 the sense that you did not do it again, or --
 20 A. No, I did not do it again.
 21 Q. (Continuing) -- no, you don't remember? Okay.
 22 A. I needed my job.
 23 Q. Let me ask you this: Do you ever recall discussing with
 24 anyone the movie Sarah Marshall -- *Forgetting Sarah*
 25 *Marshall* and indicating something to the effect of there

1 are a lot of penis shots in the movie?
 2 A. Everybody was talking about that movie. Because we
 3 brought in movies daily to watch on the DVD player.
 4 Q. Did you actually watch that movie at work?
 5 A. I don't think so. It was a new movie out at the time.
 6 The girls that I was sitting at the table with were
 7 talking about it.
 8 Q. And that movie does have some penis shots --
 9 A. Yes.
 10 Q. (Continuing) -- and so that was a --
 11 A. Yes, it was.
 12 Q. (Continuing) -- topic --
 13 A. Yes.
 14 Q. (Continuing) -- a topic of conversation?
 15 A. Yes.
 16 Q. Do you ever recall talking about that movie with any of
 17 the guys at the workplace?
 18 A. I don't believe so.
 19 Q. During the course of your employment were you ever
 20 approached again by any member of management about the
 21 issue of discussing sex at the workplace?
 22 A. No.
 23 Q. So there was only one time, and that was sometime in
 24 September --
 25 A. Yes.

your boyfriend?

- A. No.
- Q. Okay. Why not?
- A. We were eating and watching a movie.
- Q. All right. Do you have friends outside of work?
- A. Yes.
- Q. Okay. Do you have a best friend?
- A. Yes.
- Q. Who's your best friend?
- A. Tracy Lewis.
- Q. Tracy's a female?
- A. Yes.
- Q. Have you ever spoken with Tracy about your frustrations with your boyfriend?
- A. Yes.
- Q. Okay. Did you tell her any of the stories -- did you tell her the story about not being able to get his attention --
- A. Yes.
- Q. (Continuing) -- when you took your clothes off?
- A. Yes.
- Q. Okay. Have you ever vented to her that if your boyfriend doesn't give you some, you're gonna go get some somewhere else?
- A. She told me to do that.

- Q. Okay, so you've had conversations with her along those lines.
- A. Yes.
- Q. All right. Have you spoken with Tracy about the sex that you do have with your boyfriend and what it's like?
- A. We're best friends, we're girls, we do that.
- Q. Okay, and I understand that. I just need to -- I just need -- I'm sorry, but I need to flesh that out with you. So you have talked about those things.
- A. Yes.
- Q. Okay. Any other friends besides Tracy?
- A. My sister.
- Q. All right. Have you talked with your sister about your frustrations with your boyfriend?
- A. Yeah.
- Q. The same kind of frustrations that you expressed to Mr. Carruthers?
- A. Yes.
- Q. Okay.
- A. Actually, I talk to my sisters more about it.
- Q. Okay.
- A. They're family.
- Q. Uh-huh. I'm sorry, do you have more than one sister?
- A. Yes.
- Q. Okay. And how many sisters do you have?

- 2 Q. What are your sisters' names?
- 3 A. Tina and Tammy.
- 4 Q. I'm sorry, the first one?
- 5 A. Tina.
- 6 Q. Tina. And Tammy?
- 7 A. Mm-hmm, yes.
- 8 Q. And you've expressed the same kind of comments that you related to Mr. Carruthers to both of your sisters,
- 9 correct?
- 10
- 11 A. Yes.
- 12 Q. And more, correct?
- 13 A. Yeah.
- 14 Q. All right. Any other friends that you talk with on a regular basis?
- 15
- 16 A. No.
- 17 Q. Okay. Do you have -- is your mother still living?
- 18 A. No.
- 19 Q. No, okay. I take it from what you just told me that you didn't say the comments that you said to Mr. Carruthers about your boyfriend because Mr. Carruthers is a man,
- 20 correct?
- 21
- 22
- 23 A. Correct.
- 24 Q. All right. You just said them because were you venting about your boyfriend.
- 25

- 1 A. Correct.
- 2 Q. And you vented to females in the same way that you vented to Mr. Carruthers about that.
- 3
- 4 A. Correct.
- 5 Q. Okay. Do you know what Bill King's job title was at Isringhausen?
- 6
- 7 A. Umm, no. I thought he was just worker just like the rest of us in the warehouse.
- 8
- 9 Q. Okay, you never learned that he was warehouse supervisor?
- 10 A. Somebody said something about it, but he didn't act like a supervisor.
- 11
- 12 Q. Okay. Somebody said something to you at some point that he was a warehouse supervisor?
- 13
- 14 A. Yeah.
- 15 Q. Do you remember who that was?
- 16 A. I think Joe told me at one point in time, but Bill never acted like a supervisor.
- 17
- 18 Q. Okay. Do you know whether Bill King was supposed to be undertaking any responsibilities with respect to training of warehouse personnel?
- 19
- 20
- 21 A. Yes.
- 22 MR. PIPER: Objection, foundation.
- 23 BY MS. SETTERINGTON:
- 24 Q. Do you know one way or the other?
- 25 MR. PIPER: Same objection.

1 (At about 11:55 a.m. break, resuming at about
 2 11:55 a.m.)
 3 MR. PIPER: Thanks, Tonya. I don't have any
 4 further questions.
 5 **RECROSS-EXAMINATION**
 6 BY MS. SETTERINGTON:
 7 Q. Ms. Colburn, I apologize, I do have one area I've got to
 8 follow up with you on. And that is just related to, I
 9 want to make sure I'm understanding your understanding of
 10 the procedure for filling out the inspection sheets.
 11 Umm, did you get on and off a forklift several times
 12 throughout a day?
 13 A. Yes.
 14 Q. Okay. Did you have to fill out a sheet each time you
 15 went back and got on the forklift, or did you just have
 16 to do that in the morning each day?
 17 A. In the morning before you started your shift each day.
 18 Q. Okay.
 19 A. Because we were on the same fork truck all day.
 20 Q. So, basically a person checked out a forklift and they
 21 were on that forklift all day.
 22 A. Yes.
 23 Q. All right. And do you remember how many forklifts there
 24 were?
 25 A. Three. Three stand-ups, one sit-down.

1 Q. Okay. You said you worked on a forklift pretty much
 2 every day after you learned how to do that, correct?
 3 A. Correct.
 4 Q. Who else worked on the forklift every day?
 5 A. John Carruthers, and Lloyd.
 6 Q. Okay. Did Bill King?
 7 A. Umm, not as much as the rest of us.
 8 Q. Okay. Was there any other person who regularly checked
 9 out the last forklift?
 10 A. Umm, the sit-down was supposed to be checked out by
 11 shipping, because they usually used the sit-down. But I
 12 had to fill the battery in it every time I used it, so
 13 it's like it wasn't being done.
 14 Q. Okay. And so the first person to get on any one of those
 15 forklifts in a day would fill out the inspection sheet
 16 and that would be good for the day, correct?
 17 A. Yes.
 18 Q. What time did you come into work in the morning?
 19 A. When we started, six.
 20 Q. Did Lloyd come in at the same time, or was he supposed to?
 21 A. Everybody was supposed to report at six.
 22 Q. Okay. Shipping too?
 23 A. Yes.
 24 Q. Okay. Did Geoff Jones typically come and grab a forklift
 25 that was already checked out when he would get on a

1 forklift, did his use occur later in the day?
 2 A. Yes.
 3 MR. PIPER: Objection, foundation.
 4 BY MS. SETTERINGTON:
 5 Q. I'm sorry, your answer?
 6 A. Yes.
 7 Q. Okay. You had the opportunity to observe Geoff Jones
 8 using the forklift, I take it from your testimony,
 9 correct?
 10 A. Yes.
 11 Q. Okay. All right.
 12 MS. SETTERINGTON: Nothing further.
 13 **FURTHER REDIRECT EXAMINATION**
 14 BY MR. PIPER:
 15 Q. Is it your testimony that he always took it after someone
 16 had checked it out during the day, or did he check it out
 17 himself --
 18 A. He never --
 19 Q. (Continuing) -- in the morning?
 20 A. He didn't check it out; he just took it, got on it and
 21 took it.
 22 Q. Was he supposed to check it out if he took it?
 23 A. If you are on a fork truck, you're supposed to check the
 24 fork truck before you drive it.
 25 Q. What do you mean by check it?

1 A. You're supposed to fill out your check sheet. If you get
 2 on a fork truck, you have to fill out a check sheet for
 3 that fork truck you get on.
 4 Q. So it doesn't matter if anyone had used it earlier in the
 5 day; if you get on a fork truck for the first time,
 6 you're supposed to check it.
 7 A. Correct.
 8 Q. And after Mr. Jones would use the fork truck, you would
 9 notice that the -- I didn't quite understand your
 10 testimony, the fluid would be low in the battery, or
 11 something to that effect?
 12 A. On a --
 13 MS. SETTERINGTON: I object to the form of the
 14 question, foundation.
 15 THE WITNESS: On the sit-down.
 16 BY MR. PIPER:
 17 Q. That's your testimony, isn't it --
 18 A. Yes.
 19 Q. (Continuing) -- that after he used it --
 20 A. After he used it, yes.
 21 Q. (Continuing) -- that you would --
 22 A. Yes.
 23 Q. (Continuing) -- you would be able to inspect the fork
 24 truck, and you noticed that the fluid was low.
 25 A. The water would be low in the battery, correct.