

KeyCite Red Flag - Severe Negative Treatment
Reversed by Belton v. Lal Chicken, Inc., N.Y.A.D. 1 Dept., April 26, 2016

2015 WL 4197952 (N.Y.Sup.) (Trial Order)
Supreme Court, New York.
Bronx County

Bridgette BELTON, Plaintiff,

v.

LAL CHICKEN, INC., Lal Chicken and Donuts Management, Inc.,
Lalmir Sultanzada and 145th Street Ice Cream, Inc., Defendants.

No. 3032752012.
June 30, 2015.

Decision and Order

Alexander W. Hunter, Jr., Judge.

*1 HON. ALEXANDER W. HUNTER, JR.

The motion by defendants for an order setting aside the jury's verdict for both liability and damages as improper and against the weight of the evidence and ordering a new trial is denied. Defendants' motion to set aside the jury's award of compensatory damages in the amount of \$300,000 as excessive and significantly reducing the award to an amount that would constitute fair and reasonable compensation, is granted.

The cross-motion by plaintiff Bridgette Belton for an order directing defendants to pay her attorney fees in the amount of \$65,406.26, is denied without prejudice.

The trial of this matter involved plaintiff's claims of sexual harassment by defendants' employees, in violation of the New York State Human Rights Law. On December 11, 2014, the jury rendered a verdict in favor of plaintiff awarding her compensatory damages in the amount of \$300,000 and damages for loss earnings in the amount of \$20,000.

Defendants seek an order setting aside the jury's verdict and entering judgment in their favor as a matter of law on the grounds that plaintiff's testimony was not truthful and contained numerous inconsistencies. They further argue that the evidence of plaintiff's mental anguish offered at trial is insufficient to support the jury's compensatory damages award of \$300,000, that the award materially deviates from what is reasonable compensation based on similar circumstances and that, therefore, it should be significantly reduced.

Plaintiff opposes the motion and cross-moves for an award of attorney fees in the amount of \$65,406.26. Plaintiff argues that an award of attorney fees is warranted in New York Human Rights Law discrimination cases and that the court should follow the same principles as those in federal civil rights cases with respect to attorney fees. Plaintiff opposes defendants' motion, arguing that defendants have failed to demonstrate that the weight of the evidence requires judgment in favor of defendants. Plaintiff contends that the jury credited her testimony and that there was sufficient evidence to support both the liability verdict and damages award.

Defendants oppose plaintiffs motion for attorney fees arguing that it is deficient as it is unsupported by necessary documentation, such as the contingency fee agreement entered into by plaintiff and counsel, contemporaneous billing records, and copies of invoices for disbursements. Moreover, defendants oppose the inclusion of fees for travel time expended by plaintiff's counsel. Finally, defendants argue that fees for hours spent on unsuccessful claims should be excluded from the court's award calculation.

CPLR 4404 provides that, “[a]fter a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court.” The standard to be used is that which “deviates materially from what would be reasonable.” See, CPLR 5501(c).

*2 A trial court can set aside a jury's verdict and order a new trial “only if there was no ‘valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of evidence presented.’ The test... is not whether the jury erred in weighing the evidence, but whether any viable evidence existed to support the verdict.” (citations omitted). *Lolik v. Big V Supermarkets, Inc.*, 86 N.Y.2d 744 (1995). Moreover, it is well established that the court's discretionary power pursuant to CPLR 4404, “must be exercised with caution since, in the absence of an indication that substantial justice has not been done, a litigant is entitled to the benefit of a favorable verdict. Fact-finding is within the province of the jury, not the trial court....” (citations omitted). *Brown v. Taylor*, 221 A.D.2d 208 (1st Dept. 1995). This court finds that there was a valid line of reasoning that led to the conclusion reached by the jury in this case. Here, the jury, well within its authority, evidently credited the testimony of plaintiff and her counselor and discredited the testimony of defendants' witnesses regarding her claims of sexual harassment.

With respect to the jury's award to the plaintiff, New York courts rely on federal law in determining claims under the New York Human Rights Law. *Miller Brewing Co. v. State Div. of Human Rights*, 66 N.Y.2d 937 (1985). The cases cited by defendants, where plaintiffs suffered more substantial harm than that sustained by Ms. Belton and whose awards were significantly lower than that of Ms. Belton, confirm that her case falls within the “significant” category of claims. “Significant” claims are generally “based on more substantial harm or more offensive conduct, are sometimes supported by medical testimony or evidence, evidence of treatment by a healthcare professional and/or medication and testimony from other, corroborating witnesses.” *Rainone v. Potter*, 388 F.Supp.2d 120, 122-23 (EDNY 2005). Plaintiff's case does not merit an award in excess of \$100,000, an amount usually reserved for cases of “egregious” damages which “involve either ‘outrageous and shocking’ discriminatory conduct or a significant impact on the physical health of the plaintiff. These cases also ‘generally contain evidence of debilitating and permanent alterations in lifestyle.’ ” *Khan v. Hip Centralized Lab. Services, Inc.*, 2008 WL 4283348 (EDNY Sept. 17, 2008). Plaintiff testified that she was subjected to advances from her manager for six months, during which time he repeatedly and forcibly touched her genital area and breasts. Plaintiff did not offer any cases in opposition to those submitted by defendants. This court finds that the jury's award for compensatory damages in the amount of \$300,000 is excessive and should be reduced to \$100,000.

This court cannot make a determination on plaintiffs cross-motion for attorney fees absent the contingency retainer agreement entered into by plaintiff and her attorney, and more supporting documentation.

Accordingly, that branch of defendants' motion for an order setting aside the jury's verdict and ordering a new trial is denied. Defendants' motion to set aside and reduce the jury's award for compensatory damages is granted and the compensatory damage award is reduced from \$300,000 to \$100,000.

Plaintiffs' cross-motion for an award of attorney fees is denied without prejudice.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IAS PART 23A**

-----X
BRIDGETTE BELTON,

Plaintiff,

Index No.: 303275/2012

-against-

Decision and Order

LAL CHICKEN, INC., LAL CHICKEN AND DONUTS
MANAGEMENT, INC., LALMIR SULTANZADA and
145TH STREET ICE CREAM, INC.,

Defendants.

-----X
HON. ALEXANDER W. HUNTER, JR.

The motion by defendants for an order setting aside the jury's verdict for both liability and damages as improper and against the weight of the evidence and ordering a new trial is denied. Defendants' motion to set aside the jury's award of compensatory damages in the amount of \$300,000 as excessive and significantly reducing the award to an amount that would constitute fair and reasonable compensation, is granted.

The cross-motion by plaintiff Bridgette Belton for an order directing defendants to pay her attorney fees in the amount of \$65,406.26, is denied without prejudice.

The trial of this matter involved plaintiff's claims of sexual harassment by defendants' employees, in violation of the New York State Human Rights Law. On December 11, 2014, the jury rendered a verdict in favor of plaintiff awarding her compensatory damages in the amount of \$300,000 and damages for loss earnings in the amount of \$20,000.

Defendants seek an order setting aside the jury's verdict and entering judgment in their favor as a matter of law on the grounds that plaintiff's testimony was not truthful and contained numerous inconsistencies. They further argue that the evidence of plaintiff's mental anguish offered at trial is insufficient to support the jury's compensatory damages award of \$300,000, that the award materially deviates from what is reasonable compensation based on similar circumstances and that, therefore, it should be significantly reduced.

Plaintiff opposes the motion and cross-moves for an award of attorney fees in the amount of \$65,406.26. Plaintiff argues that an award of attorney fees is warranted in New York Human Rights Law discrimination cases and that the court should follow the same principles as those in federal civil rights cases with respect to attorney fees. Plaintiff opposes defendants' motion, arguing that defendants have failed to demonstrate that the weight of the evidence requires judgment in favor of defendants. Plaintiff contends that the jury credited her testimony and that there was sufficient evidence to support both the liability verdict and damages award.

Defendants oppose plaintiff's motion for attorney fees arguing that it is deficient as it is unsupported by necessary documentation, such as the contingency fee agreement entered into by plaintiff and counsel, contemporaneous billing records, and copies of invoices for disbursements. Moreover, defendants oppose the inclusion of fees for travel time expended by plaintiff's counsel. Finally, defendants argue that fees for hours spent on unsuccessful claims should be excluded from the court's award calculation.

CPLR 4404 provides that, "[a]fter a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court." The standard to be used is that which "deviates materially from what would be reasonable." See, CPLR 5501(c).

A trial court can set aside a jury's verdict and order a new trial "only if there was no 'valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of evidence presented.' The test... is not whether the jury erred in weighing the evidence, but whether any viable evidence existed to support the verdict." (citations omitted). **Lolik v. Big V Supermarkets, Inc.**, 86 N.Y.2d 744 (1995). Moreover, it is well established that the court's discretionary power pursuant to CPLR 4404, "must be exercised with caution since, in the absence of an indication that substantial justice has not been done, a litigant is entitled to the benefit of a favorable verdict. Fact-finding is within the province of the jury, not the trial court..." (citations omitted). **Brown v. Taylor**, 221 A.D.2d 208 (1st Dept. 1995). This court finds that there was a valid line of reasoning that led to the conclusion reached by the jury in this case. Here, the jury, well within its authority, evidently credited the testimony of plaintiff and her counselor and discredited the testimony of defendants' witnesses regarding her claims of sexual harassment.

With respect to the jury's award to the plaintiff, New York courts rely on federal law in determining claims under the New York Human Rights Law. **Miller Brewing Co. v. State Div. of Human Rights**, 66 N.Y.2d 937 (1985). The cases cited by defendants, where plaintiffs suffered more substantial harm than that sustained by Ms. Belton and whose awards were significantly lower than that of Ms. Belton, confirm that her case falls within the "significant" category of claims. "Significant" claims are generally "based on more substantial harm or more offensive conduct, are sometimes supported by medical testimony or evidence, evidence of treatment by a healthcare professional and/or medication and testimony from other, corroborating witnesses." **Rainone v. Potter**, 388 F.Supp.2d 120, 122-23 (EDNY 2005). Plaintiff's case does not merit an award in excess of \$100,000, an amount usually reserved for cases of "egregious" damages which "involve either 'outrageous and shocking' discriminatory conduct or a significant impact on the physical health of the plaintiff. These cases also 'generally contain evidence of debilitating and permanent alterations in lifestyle.'" **Khan v. Hip Centralized Lab. Services, Inc.**, 2008 WL 4283348 (EDNY Sept. 17, 2008). Plaintiff testified that she was subjected to advances from her manager for six months, during which time he repeatedly and forcibly touched her genital area and breasts. Plaintiff did not offer any cases in

opposition to those submitted by defendants. This court finds that the jury's award for compensatory damages in the amount of \$300,000 is excessive and should be reduced to \$100,000.

This court cannot make a determination on plaintiff's cross-motion for attorney fees absent the contingency retainer agreement entered into by plaintiff and her attorney, and more supporting documentation.

Accordingly, that branch of defendants' motion for an order setting aside the jury's verdict and ordering a new trial is denied. Defendants' motion to set aside and reduce the jury's award for compensatory damages is granted and the compensatory damage award is reduced from \$300,000 to \$100,000.

Plaintiffs' cross-motion for an award of attorney fees is denied without prejudice.

Defendants are directed to serve a copy of this order with notice of entry upon all parties within thirty (30) days of entry and file proof thereof with the clerk's office.

This constitutes the decision and order of this court.

Dated: June 23, 2015

ENTER:



A handwritten signature in black ink, appearing to read 'A.W. Hunter Jr.', is written over a horizontal line.

J.S.C.

ALEXANDER W. HUNTER JR.