SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DIANA SINAI PORTILLO MEDRANO, Plaintiff, **v.** **INTERNATIONAL GOLDEN FOODS, LLC,** Defendant.	)	**Civil Action No. 2021 CA 000058 B** **Judge Juliet J. McKenna**

ORDER

Pending before the Court is Defendant International Golden Foods, LLC's (hereinafter "Defendant" or "IGF") Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial and Remittitur. Plaintiff Diana Portillo ("Plaintiff" or "Ms. Portillo") filed an Opposition to the Motion, to which Defendant replied. For the reasons set forth below, Defendant's motion is denied.

Relevant Legal Standards

Pursuant to D.C. Superior Court Civil Rule 50(b), following trial and entry of judgment, a party may renew a motion for judgment as a matter of law made during trial; "[i]f the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion." "A directed verdict is proper only if there is no evidentiary foundation, including all rational inferences from the evidence, by which a reasonable juror could find for the party opposing the motion, considering all the evidence in the light most favorable to that party." *Pazmino v. Washington Metro. Area Transit Auth.*, 638 A.2d 677, 678 (D.C. 1994). "This is an exacting standard, [] that is met 'only in the unusual case in which only one conclusion could

reasonably be drawn from the evidence.'" *District of Columbia v. Bryant*, 307 A.3d 443, 450 (D.C. 2024) (quoting *Etheredge v. District of Columbia*, 635 A.2d 908, 915 (D.C. 1993)).

D.C. Superior Court Civil Rule 59 permits the court to grant a motion for a new trial on all or some of the issues "if the verdict is against the clear weight of the evidence, or if for any reason or combination of reasons justice would miscarry if the verdict were allowed to stand." *Gebremdhin v. Avis Rent-A-Car System*, 689 A.2d 1202, 1204 (D.C. 1997) (quotations and citations omitted). In considering a motion for a new trial, "the trial judge need not view the evidence in the light most favorable to the non-moving party. Indeed, the judge can, in effect, be the thirteenth juror; [s]he may weigh evidence, disbelieve witnesses, and grant a new trial even when there is substantial evidence to sustain the verdict." *Etheredge*, 635 A.2d at 917 n.11 (quotations and citations omitted). Although "a trial court should exercise great restraint in setting aside the verdict of a jury," its discretion to do so is "broad," and "[t]he exercise of this power is not in derogation of the right of trial by jury but is one of the historic safeguards of that right." *Fisher v. Best*, 661 A.2d 1095, 1098 (D.C. 1995) (quotations and citations omitted).

A court may also grant a new trial "based on excessiveness of the verdict" if "the verdict is so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate." *Finkelstein v. District of Columbia*, 593 A.2d 591, 595–96 (D.C. 1991) (en banc) (quotations and citations omitted). "The trial court not only has the power but also the duty to set aside a verdict which is grossly and palpably excessive and failure so to do will constitute reversible error." *Munsey v. Safeway Stores, Inc.*, 65 A.2d 598, 600 (D.C. 1949). "Excessiveness refers not only to the amount of the verdict but to whether, in light of all the facts and circumstances, the award of damages appears to have been the product of passion, prejudice, mistake, or consideration of improper factors rather than a measured assessment of the degree of

injury suffered by the plaintiff." *Scott v. Crestar Financial Corp.*, 928 A.2d 680, 688 (D.C. 2007); *see Finkelstein*, 593 A.2d at 596 & n.9. "Alternatively stated, the test is whether the verdict is beyond all reason, or is so great as to shock the conscience." *Vassiliades v. Garfinckel's, Brooks Brothers*, 492 A.2d 580, 594 (D.C. 1985) (quotations and citations omitted). "While reference to other awards may be helpful, in the end, excessive verdicts should not be measured strictly on a comparative basis." *District of Columbia v. Hawkins*, 782 A.2d 293, 305 (D.C. 2001) (quotations and citations omitted); *Phillips v. District of Columbia*, 458 A.2d 722, 724 (D.C. 1983).

If the excessiveness of the verdict justifies a new trial, the Court may offer a remittitur. *Hawkins*, 782 A.2d at 304. "Only where the verdict is so excessive as to shock the conscience will a substantial remittitur or new trial be warranted." *Id.* "To avoid violating the Seventh Amendment, . . . the court usually must afford the prevailing party the option of rejecting the reduced award and obtaining a new trial on the issue of damages." *Phillips*, 458 A.2d at 724.

Analysis

Motion for Judgment as a Matter of Law

IGF seeks reversal of the jury's verdict in favor of Ms. Portillo on her claim of retaliation, arguing that because Ms. Portillo was not legally authorized to work in the United States, there were no grounds upon which a reasonable jury could find that she suffered an adverse employment action or that her termination was retaliatory. As an initial matter, Plaintiff argues that Defendant waived these arguments by failing to raise them in its original Motion for Judgment during trial. While IGF's instant motion expands upon and augments its prior oral arguments with citations to case law and federal immigration statutes, this Court is satisfied that Defendant adequately preserved the issue by repeatedly maintaining that it was legally required to terminate Ms. Portillo's employment upon her disclosure that that she was undocumented. Incorporating by

reference its prior rulings that Plaintiff's undocumented status did not preclude judgment in her favor as a matter of law on her claim of retaliation, this Court rejects Defendant's renewed arguments and denies the Motion for Judgment as a Matter of Law.

At trial, Plaintiff presented evidence that IGF higher-level supervisory personnel were previously aware that she lacked proper work authorization yet proceeded to hire and employ her for years, and knowingly employed other undocumented workers. *See* Pl. Opp. pp. 4-5. This evidence, combined with the temporal proximity between Ms. Portillo's second written complaint alleging workplace discrimination and unlawful harassment based upon gender identity and expression and her termination, supported a rational inference that the Defendant's proffered non-retaliatory reason for ending Plaintiff's employment was wholly or partially pretextual and that Ms. Portillo's participation in activity protected by the DCHRA was a substantial factor in her termination.

IGF maintains that the jury's verdict must be set aside as a matter of law because it was legally required to terminate Plaintiff upon her disclosure that she lacked proper work authorization, and thus its actions could not legally constitute retaliation prohibited by the D.C. Human Rights Act. In support of its motion, the Defendant relies on a United States Supreme Court decision holding that undocumented workers were not entitled to back pay under the National Labor Relations Act for an employer's violation of the right to unionize, *see Hoffman Plastic Compounds, Inc. v.* NLRB, 535 U.S. 137 (2002), and decisions from other jurisdictions denying undocumented claimants relief pursuant to Title VII of the Civil Rights Act, *see Egbuna v. Time-Life Libraries,* 153 F.3d 184 (4th Cir. 1998),[1] and New Jersey's anti-discrimination law,

[1] As Judge Kollar-Kotelly of the United States District Court for the District of Columbia noted, "that case goes against the weight of authority, and the Fourth Circuit has since appeared to limit its holding in *Egbuna*, explaining that the EEOC should be allowed to investigate claims of employment discrimination, even if those claims come from an

which limits protections for undocumented immigrants, *see Crespo v. Evergo Corp.*, 841 A.2d 471 (N.J. App. Div. 2004).

Given the sweeping protections afforded by the D.C. Human Rights Act, this Court concludes that these cases do not undermine the legality of the jury's verdict or otherwise dictate a different result. As the D.C. Court of Appeals has recognized, D.C. Code § 2-1402.61 prohibiting retaliation for engaging in protected activity under the DCHRA, "contains no safe harbor for otherwise lawful acts done for an improper retaliatory purpose," and "the fact that the employer may have a valid legal claim does not preclude the employee from establishing that the employer's motive in asserting the claim was impermissible retaliation." *Arthur Young & Co. v. Sutherland*, 631 A.2d 354, 367-68 (D.C. 1993) (rejecting argument that, because defendant had a legal right to foreclose on the property, its efforts to do so could not constitute retaliation prohibited under the DCHRA). Moreover, "employers cannot shield their adverse actions as business judgment if the record belies the proffered reason." *Propp v. Counterpart Int'l*, 39 A.3d 856, 870 (D.C. 2012).

In declining to follow "the Supreme Court's approach to Title VII retaliation claims when determining what standard to apply to DCHRA retaliation claims[,]" the D.C. Court of Appeals recently noted that "[a]lthough we often look to Title VII case law for guidance as we interpret the DCHRA, we do not follow it automatically, and Title VII case law is not binding on us in the DCHRA context." *Bryant*, 307 A.3d at 456 ; *see also Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 889 (D.C. 1998) (individual law firm partners may be held liable under the DCHRA but not Title VII); *Sutherland*, 631 A.2d at 371-72 (DCHRA's text and history permitted punitive damages, notwithstanding that Title VII did not then allow for them). In

undocumented worker." *EEOC v. Sol Mexican Grill LLC*, 2019 U.S. Dist. LEXIS 112745, *5 (quoting *EEOC v. Maritime Autowash, Inc.*, 820 F.3d 662, 668 (4th Cir. 2016)).

interpreting D.C.'s Human Rights Act more broadly, the D.C. Court of Appeals pointed to the legislative history of the DCHRA, which looks beyond Title VII and specifically embraces the Civil Rights Act of 1866 "that states simply that all persons shall enjoy the same property rights as any white citizen." *Sutherland*, 631 A.2d at 371-72 (quoting DISTRICT OF COLUMBIA CITY COUNCIL, COMMITTEE ON ECONOMIC DEVELOPMENT, LABOR AND MANPOWER, REPORT ON TITLE 34, HUMAN RIGHTS LAW, at 2 (1973)).

A more expansive reading of D.C.'s Human Rights Act is further supported by the D.C. Council's sweeping statement of statutory intent: "to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit," and inclusion of "national origin" among the Act's many protected categories. *See* D.C. Code § 2-1401.01; *see also George Wash. Univ. v. D.C. Bd. of Zoning Adjustment,* 831 A. 2d 921, 939 (D.C. 2003) ("The Human Rights Act is a broad remedial statue, and it is to be generously construed."). The statute protects "any person" engaged in protected activity from retaliation, *see* D.C. Code § 2-1402.61(a), and broadly defines "employee" to include "any individual employed by or seeking employment from an employer," without limitation to citizenship status.[2] *See* D.C. Code § 2-1401.02(9). Thus, the instant case is both factually and legally distinguishable from the cases relied upon by the Defendant interpreting and applying federal and New Jersey law. Under the D.C. Human Rights Act, even if Ms. Portillo's admission that she lacked proper work authorization factored into IGF's decision to terminate her, a reasonable jury could still return a verdict in favor of the Plaintiff on her claim of retaliation if it found that her participation in a protected activity was a substantial factor in her termination.

[2] This definition was further expanded in October 2022 to include unpaid interns and individual contractors.

Motion for a New Trial and Remittitur of Punitive Damages Award

This Court further finds no grounds upon which to grant IGF's Motion for a New Trial or Remittitur based upon the jury's punitive damages award. The jury found in favor of the Plaintiff on her claims of retaliation and hostile work environment and awarded $115,000 on each count for a total of $230,000 in compensatory damages, and $700,000 in punitive damages. "In order to sustain an award of punitive damages, the plaintiff must prove, by a preponderance of the evidence, that the defendant committed a tortious act, and by clear and convincing evidence that the act was accompanied by conduct and a state of mind evincing malice or its equivalent." *Gordon v. Rice*, 261 A.3d 224, 227 (D.C. 2021) (quoting *Jonathan Woodner Co. v. Breeden*, 665 A.2d 929, 938 (D.C. 1995)). At trial, Plaintiff presented the testimony of multiple witnesses from which a reasonable jury could rationally conclude that IGF acted with intentional malice, willful disregard and/or reckless indifference to Ms. Portillo's right not to be subjected to harassment and retaliation, supporting the jury's punitive damages award.

The Defendant now complains that "[t]he entire punitive damages award must fail because the jury awarded a single punitive damage award based on multiple claims," rendering it "impossible to determine what portion of the punitive damages award . . . is based on the retaliation claim," *see* Def. Mot. at 10. However, in response to this Court's inquiry about whether the verdict form should include separate lines for any punitive damages award in connection with each count, IGF's counsel agreed that one line on the verdict form for the punitive damages award was "better and simpler." *See* Pl. Ex. 8, at 56:13-24. As in *Nimetz v. Cappadona,* 596 A.2d 603, 608 (D.C. 1991), which "adopt[ed] the rule that a defendant who fails to request a special verdict form in a civil case will be barred on appeal from complaining that the jury may have relied on a factual theory unsupported by the evidence when there was sufficient evidence to support another theory

properly before the jury," Defendant cannot now benefit from uncertainty it helped to foster.

"Even when punitive damages are in order, however, a punitive damages award must comport with due process, which 'prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor.'" *Gordon,* 261 A.3d at 227 (quoting *State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408, at 427 (2003)). The Supreme Court has identified three factors in assessing the constitutionality of a punitive damages award: "(1) the degree of reprehensibility of the Defendant's misconduct; (2) the disparity between the actual harm or potential harm suffered by the Plaintiff and the punitive damages award;" and (3) the difference between the punitive damages award and the available civil penalties. *Id.* The Court will address each of these factors in turn.

Plaintiff's Opposition ably and accurately summarizes the abundant evidence of the egregious actions and inactions of IGF's managers and supervisors, which created and promoted a hostile work environment in which Ms. Portillo was subjected to persistent misgendering, ridicule, and humiliation for over two years, despite her written and verbal pleas to cease the mistreatment. *See* Pl. Opp. at 8-11. The evidence supporting Plaintiff's retaliation claim also reflects reprehensible behavior by IGF in knowingly hiring workers– including Ms. Portillo– who lacked proper work authorization, invoking their undocumented status to threaten and control them, and using Ms. Portillo's admission that she was not legally authorized to work in the United States to justify her termination, while simultaneously continuing to employ other undocumented workers. In finding for Plaintiff on the retaliation claim, the jury clearly rejected Defendant's proffered justification for her termination as pretextual, further supporting a clear and convincing finding that IGF acted with malice, willful disregard and/or reckless indifference. As the Court of Appeals observed in *Fred A. Smith Mgmt. Co. v. Cerpe,* 957 A.2d 907, 916 (D.C. 2008) "the

proximity of the discharge to [Plaintiff's] complaint of harassment and the evidence that none of the proffered reasons for it had troubled management earlier support a jury finding that the officers contrived the reasons for firing her and thus were motivated by malice." Thus, this Court concludes that the jury's award of $700,000 in punitive damages is both reasonable and proportionate to the degree of reprehensibility of Defendant's conduct and the wrong committed.

In this case, the ratio between the punitive damages award of $700,000 and the compensatory damages award of $230,000 for Plaintiff's actual damages is 3:1, at the lower end of the "single-digit multipliers [that] are more likely to comport with due process." *Gordon* at 229 (quoting *State Farm*, 528 U.S. at 425). Moreover, the punitive damages award comports with the traditional statutory double, treble, or quadruple damages available in other private civil actions for violations of the D.C. Consumer Protection Procedures Act, D.C. Code § 28-3905(k)(2) (permitting recovery of treble damages in addition to compensatory and punitive damages), and the D.C Wage Payment and Collection Law, D.C. Code § 32-1308(a)(1)(A)(ii) (authorizing liquidated damages equal to treble the amount of unpaid wages). *See Daka, Inc. v. McCrae*, 839 A.2d 682, 699 (D.C. 2003) (observing that the Supreme Court in *State Farm*, 528 U.S. at 408, 425-26 found such statutory multipliers to be instructive as a measure in evaluating the reasonableness of a punitive damages award).

Finally, this Court examines the difference between the punitive damages award and the statutory penalties authorized. The DCHRA places no limit on allowable damages. Thus, while the D.C. Court of Appeals "often look[s] to Title VII for guidance when interpreting the DCHRA," it has explained that "we are not necessarily bound by Title VII's strictures, particularly when it comes to damages." *Daka, Inc. v. Breiner*, 711 A.2d 86, 102 (D.C. 1998) (affirming trial court's denial of remittitur of $400,000 punitive damages award, thirty-nine times the compensatory

damages award, notwithstanding Title VII's federal damages cap of $300,000). As discussed above, the DCHRA is based on the more expansive 1866 Civil Rights Act, which placed no ceiling on the damages available, and is intended to serve as a broad remedial statute. Based upon the legislative history and interpretation of the Act, and the need to deter harassment and retaliation in the workplace against employees based upon gender identity and expression, the total punitive damages award of $700,000 for two separate violations of the D.C Human Rights Act is not so excessive as to render the jury's award unconstitutional. After evaluation of each of these factors, this Court concludes that the jury's punitive damages award was supported by clear and convincing evidence and reflects "a measured assessment of the degree of injury suffered by the plaintiff" and was not the "product of passion, prejudice, mistake, or consideration of improper factors." *Scott*, 928 A.2d at 688.

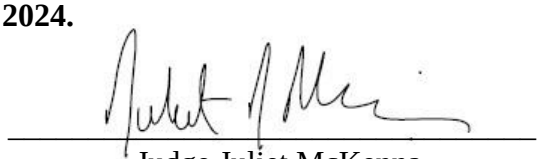
Conclusion

Having thoroughly considered the arguments of both parties and the record at trial, over which the undersigned presided, this Court finds that the jury's verdict was fully supported by both the law and the evidence presented. Therefore, for the reasons set forth above, it is hereby

ORDERED that Defendant International Golden Foods, LLC's Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial and Remittitur is **DENIED**; and it is

FURTHER ORDERED that the stay on the enforcement of the judgment in the amount of $930,000, entered on August 15, 2024, is **VACATED.**

SO ORDERED this 18th day of November 2024.



Judge Juliet McKenna
District of Columbia Superior Court

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