

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PAUL SCOTT McCAY,	)	
	)	
Plaintiff,	)	CIVIL NO. 524/1984
	)	
v.	)	
	)	
MARTIN MARIETTA ALUMINIA, INC.,	)	ACTION FOR DAMAGES
and REGINALD ANDREWS,	)	
	)	
Defendants.	)	
	)	

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PETERSEN, Judge

MEMORANDUM OPINION

March 6, 1985

This matter is before this Court after a jury trial on Plaintiff's Motion for New Trial and Motion for Examination of Juror. For the reasons set forth below, the plaintiff's motions will be denied.

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FACTS

On February 12, 1984 the jury returned a verdict finding that the defendant Martin Marietta, Inc. and defendant Reginald Andrews did not intentionally and improperly interfere with the contract between Plaintiff Paul McCay and General Engineering Corporation. The jury also found that Defendant Andrews did not commit assault and battery on Plaintiff McCay and that the defendants' actions were not the proximate cause of the plaintiff's injuries. Plaintiff contends that the verdict is clearly against weight of the evidence and that the evidence admitted was in error.

DISCUSSION

A. Verdict

A motion for a new trial requires the exercise of discretion by the court, whose "duty is essentially to see that there is no miscarriage of justice". Laltoo v. Bank of Nova Scotia, 18 V.I. 479, 483 (D.V.I. 1981) citing 6A J. Moore, Moore's Federal Practice Section 59.08[5], at 56-160 (footnote omitted) (2d ed. 1974). The power to grant a new trial should be invoked only in exceptional instances where the evidence weighs heavily against the verdict. Thus, a new trial should not be granted merely because a trial judge

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believes another result would be more reasonable. Fireman's Fund Insurance Co. v. AALCO Wrecking Co., Inc., 466 F.2d 179 (8th Cir. 1972), cert. denied, 410 U.S. 930 (1973). The trial judge should view the verdict in the overall setting by considering the character of the evidence and the complexity of the legal principles which the jury had to apply. Lind v. Schenley Industries Inc., 278 F.2d 79, 89 (3rd Cir. 1960), cert. den., 364 U.S. 835 (1961). Unless the jury has reached a seriously erroneous result, the judge should not disturb the verdict. Id.

In the case at bar, the plaintiff claims that the verdict reached was clearly against the weight of the evidence. The credibility of witnesses and the weight attached to evidence, however, is solely a jury determination. In his brief, the Plaintiff contends that "there was no credible evidence that plaintiff struck defendant first". (emphasis in the original). Plaintiff has compellingly ignored the testimony of the defendant's witnesses who testified that the plaintiff struck the first blow. Plaintiff must be reminded that the determination of the credibility of witness is purely a jury function.

Plaintiff also contends that the defendants have not addressed the issue of tortious interference. However, such evidence was clearly laid before the jury. The evidence

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adduced at trial demonstrated that Plaintiff McCay was terminated four (4) months after the incident. The jury could have concluded that the plaintiff's termination was not the result of Defendant Martin Marietta's banning him from the work site, but rather was the result of General Engineering Corporation's reducing the work force. Based on the evidence admitted, the inferences which could be drawn, the simplicity of the legal principles involved, Lind supra, this Court finds that the jury's verdict was reasonable and not seriously erroneous.

B. Evidentiary Issues

The plaintiff has also questioned this Court's action in permitting the defendant to introduce certain evidence. Specifically, plaintiff charges that Mr. Andrew's conversation with Mr. Mohammed should have been excluded pursuant to Federal Rules of Evidence 802. The plaintiff's objection, "Objection Your Honor, it is hearsay. That is impeaching the witness. That is his witness" (Plaintiff's Motion for New Trial), is invalid. The credibility of any witness, including the party calling him, may be attacked. F.R.E. 607. See Inventive Music, Ltd. v. Cohen, 617 F.2d 29 (3d Cir. 1981). Even though Mr. Mohammed had been called to testify on behalf of the defendants, the defendants could

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impeach his testimony. At trial Mr. Mohammed testified that Plaintiff McCay neither smelled of alcohol nor appeared to be drunk. However, the defense had Mr. Andrews testify that Mr. Mohammed had earlier stated that Plaintiff McCay was drunk. This inconsistent statement was offered for impeachment purposes. It is possible that the jury could use such inconsistent statements as substantive, rather than impeaching evidence. However, this is an evil against which this Court always attempts to guard. The utility of the evidence for impeachment purposes was balanced against its possible misuse by the jury. This Court carefully reviewed the defendant's motive in offering an inconsistent statement and found that its probative value far outweighed the prejudicial effects.

Plaintiff also challenges the admission of testimony of Mr. Bill Batts which concerned General Engineering Corporation's personnel records on the plaintiff. Plaintiff asserts that a proper foundation was not laid and that Mr. Batts did not have personal knowledge of the files. This Court finds that a proper foundation was laid. It was established that a General Engineering Corporation employee prepared the records, that such employee had a business duty to prepare such records, that it was the routine practice of the business to prepare the records, that the records were made in the regular course of business and that the entries

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were factual.

This Court finds that a witness need not have personal knowledge of the preparation of the entry. Fed.R. Evid. 803(b) advisory committee note. The witness can testify concerning his connection with the business and can describe the manner in which the business prepares and maintains its records. At trial, Mr. Batts not only testified that he was a supervisor at General Engineering Corporation, but also described the information which was routinely recorded on various forms and placed in an individual's personnel record. There were no challenges to the untrustworthiness of either the source of the information or the method or circumstances of the record's preparation.

C. Other Issues

Plaintiff also contends that he was denied the opportunity to examine Mr. James Savage. However, it was revealed during pretrial conference that Mr. Savage's testimony would indicate that Mr. Savage ratified all of Mr. Arnold's managerial actions. Thus, Mr. Savage's testimony would have been merely cumulative.

In his brief, Plaintiff requests an examination of Juror Evelyn Herbert, because, while serving as a foreperson of the jury panel, she was unable to read the verdict

(emphasis in the original). Because documentary evidence was submitted to the jury, the Plaintiff asserts that the ability to read was essential to the comprehension of the documents. The Defendant avers that Ms. Herbert's ability to either hear or understand the testimony has not been challenged and that Rule 606(b) only permits a juror to testify as to any outside information or influences improperly affecting the deliberative process.

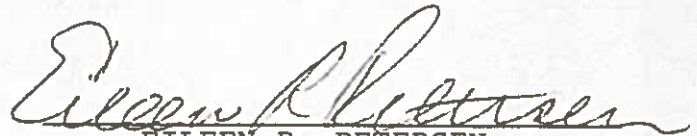
This Court finds the plaintiff's contentions wholly without merit. Rule 606(b) prohibits an inquiry into the mental process of a jury. Accord, Libertelli v. Hoffman-La Roche, Inc., 565 F. Supp. 234 (S.D.N.Y. 1983). Plaintiff, in effect, seeks to find out how the juror reached the verdict if she could not, as alleged, read. First of all, there is nothing in the record indicating that she can not read. Defendant aptly notes that Juror Herbert's ability to answer and sign the Juror Qualification Questionnaire as well as her former employment as a nurse's aide is evidence of her ability to read and to comprehend. Secondly, the juror became visibly nervous when she was asked to read the verdict. ^{1/}

^{1/} After the jurors had been dismissed, Juror Herbert approached this Judge outside of the courtroom and stated that when asked to read the verdict, it appeared as if this Judge were leaping out of her chair and lurching towards her in a grimacing manner. This undue fear of the judge upset the juror that momentarily she could neither see nor read the verdict.

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Moreover, this Court polled each member of the jury to ensure that the verdict represented each juror's conviction. Each juror responded affirmatively. 2/

For the foregoing reasons, plaintiff's Motion for New Trial and Motion for Examination of Juror must be denied.


EILEEN R. PETERSEN
Judge

2/ Besides, there is no requirement that the jury verdict be unanimous. See 5 V.I.C. Section 359.