

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

|                    |            |                                     |
|--------------------|------------|-------------------------------------|
| WILLIAM CHERUBIN,  | )          | <b>CIVIL CASE NO.: SX-17-CV-062</b> |
|                    | )          |                                     |
|                    | Plaintiff, | ACTION FOR DAMAGES.                 |
|                    | )          |                                     |
| v.                 | )          | (JURY)                              |
|                    | )          |                                     |
| LIAT (1974), LTD., | )          |                                     |
|                    | )          |                                     |
|                    | Defendant. | <b>2019 VI Super 67</b>             |
|                    | )          |                                     |

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**MEMORANDUM OPINION and ORDER**

¶ 1 THIS MATTER comes before the Court on Defendant LIAT (1974), LTD's Motion for New Trial, filed March 1, 2019 and Renewed Motion for Judgment as a Matter of Law, filed March 7, 2019. Plaintiff's Opposition to Motion for New Trial was filed March 25, 2019, and Plaintiff's Opposition to Renewed Motion for Judgment as a Matter of Law was filed March 27, 2019. Defendant's Reply to Plaintiff's Opposition to Motion for New Trial was filed April 15, 2019 and its Reply to Plaintiff's Opposition to Renewed Motion for Judgment as a Matter of Law was filed April 23, 2019. For the reasons that follow, both Motions will be denied.

**BACKGROUND**

¶ 2 This matter arises from Plaintiff's former employment with LIAT at the Henry Rohlsen Airport on St. Croix. Plaintiff William Cherubin alleged that on June 4, 2015, LIAT unlawfully terminated him from his employment because of his age in violation of the Virgin Islands Civil Rights Act (VICRA). 10 V.I.C. § 64(1)(a). Plaintiff was hired by LIAT in 1968 and over the years received promotions to various positions with increased responsibilities. In May 2008, Cherubin was promoted to Country Manager for the U.S. Virgin Islands which required that he generally direct the affairs of LIAT in the territory, and oversee and timely and accurately report sales, deposits and banking information, among other duties.

¶ 3 At some time prior to December 2014, LIAT advised its station managers, including Plaintiff, by email, that they should not be cashing any third-party checks with the company's funds. Despite this directive, in December 2014, Plaintiff cashed a third-party check in the amount of \$450 payable to his wife, Sheila Cherubin, which check was returned unpaid by the bank. By

letter of March 3, 2015, LIAT “formally reminded” Plaintiff “that absolutely no cashing of cheques including third party cheques is allowed using LIAT’s sales proceeds,” and that “this letter serves as a warning,” indicating that Plaintiff had committed an infraction and that any repetition would result in suspension without pay and, upon subsequent infraction, “the Company will take further disciplinary action against you, which may include termination.” Plaintiff Trial Exhibit 1. (Pl. Ex. 1). Two days later, by letter of March 5, 2015, Plaintiff was advised of multiple instances of inconsistencies between sales reports and banking records, among other infractions, and that he was required to provide full reimbursement of missing funds in the amount of \$1,190 by March 31, 2015. Pl. Ex. 2. Plaintiff reimbursed LIAT on April 14, 2015, 15 days after the directed date. By letter dated June 4, 2015, LIAT terminated Cherubin for the stated reason that he “repeatedly acted without authority and contrary to the Company’s policies and directives” and that his actions were viewed as “gross misconduct.” Pl. Ex. 4.

¶ 4 Cherubin asserted at trial that LIAT’s proffered reason for his termination was rather a pretext to remove him, and that the actual reason for his termination was that he was 71 years old, LIAT’s oldest employee, and beyond the expected retirement age of 65 years set out in LIAT’s employee handbook. LIAT conceded that, after the March 2015 letters, Cherubin did not repeat the infractions for which he had been warned. In each of its Motions, LIAT focuses on these infractions and mismanagement justifying termination, but does not claim that Cherubin repeated the infractions for which he had been warned by the March 2015 letters.

¶ 5 Prior to Cherubin’s termination, on May 5, 2015, LIAT announced company-wide downsizing and offered its Virgin Islands employees the opportunity to apply for early retirement, or risk facing “compulsory redundancies,” an offer that neither Plaintiff nor any other Virgin Islands LIAT employee accepted. Pl. Ex. 3.

¶ 6 On February 4 and 5, 2019, the case was tried to a jury. At trial, Cherubin presented evidence that he suffered lost income of \$82,000 that he would have earned during the period between his termination in June 2015 and LIAT’s discontinuation of its operations in St. Croix in March 2017. Cherubin and witnesses Alvin Canaii and William Bohlke, Jr. testified that Cherubin suffered and continues to suffer great emotional pain and suffering, and that he has not been the same person since his termination.

¶ 7 At the conclusion of the trial, the Court granted in part Defendant's motion and entered judgment as a matter of law dismissing Plaintiff's punitive damages claim. Cherubin's VICRA claim was submitted to the jury which found that LIAT unlawfully discriminated against Plaintiff by discharging him from employment because of his age and awarded damages for lost wages and mental pain and suffering in the amount of \$1,550,320.

## LEGAL STANDARD

### Motion for Judgment as Matter of Law

¶ 8 Defendant's Renewed Motion for Judgment as a Matter of Law is governed by Virgin Islands Rule of Civil Procedure 50.

If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may grant a motion for judgment as a matter of law against a party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

V.I. R. Civ. P. 50(a)(1)(B).

¶ 9 "If the court does not grant a motion for judgment as a matter of law, the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for new trial under Rule 59 no later than 28 days after entry of judgment." V.I. R. Civ. P. 50(b); *Sorber v. Glacial Energy VI, LLC*, 2013 VI LEXIS 69 (V.I. Super. 2013). "In ruling on the renewed motion, the court may (1) allow judgment on the verdict, if the jury returned a verdict; (2) order a new trial; or (3) direct the entry of judgment as a matter of law." V.I. R. Civ. P. 50(b)(1)-(3).

¶ 10 "Motions for judgment as a matter of law should be granted sparingly, and only when, viewed in the light most favorable to the non-moving party, the evidence is insufficient for a reasonable jury to find liability." *Royer v. Coastal Air Transport*, 2015 V.I. LEXIS 147, at \*3 (V.I. Super. 2015) (*aff'd in part, rev'd in part on other grounds*, 64 V.I. 645 (V.I. 2016))(citing *Chestnut v. Goodman*, 59 V.I. 467, 475 (V.I. 2012)). "The Court does not sit as a trier of fact when making its determination on a motion for judgment as a matter of law." *Id.* "Hence, it is impermissible for the Court to weigh evidence, determine witness credibility, or substitute its own version of the facts for that of the jury." *Id.* "The Court's only concern is the sufficiency of the evidence." *Payne v. Charles*, 2018 V.I. LEXIS 8, at \*3. (V.I. Super. 2018).

### **Motion for New Trial**

¶ 11 In evaluating Defendant's Motion for New Trial, the Court must determine whether the jury's award was excessive. Under Rule 59 of the Virgin Islands Rules of Civil Procedure, the trial court may, on motion, grant a new trial if the damage award is excessive or inadequate. V.I. R. Civ. P. 59(a)(1)(A)(iv).

¶ 12 Prior to 2016, consistent with the majority of jurisdictions, remittitur was recognized in the Virgin Islands. (*See e.g., Gumbs v. Pueblo Int'l. Inc.*, 823 F.2d 768, 773 (3d Cir. 1987)). However, the Supreme Court has held that "remittitur is wholly inconsistent with this Court's long-standing jurisprudence that questions of fact should be resolved by a jury, that a jury's factual determinations should be respected so long as there is a sufficient evidentiary basis, and that it is not the role of a judge to weigh the evidence when it has been submitted to a jury for a determination." *Antilles Sch., Inc. v. Lembach*, 64 V.I. 400, 433 (V.I. 2016). Accordingly, the Court determined in *Antilles* that the "best rule is to decline to recognize remittitur, and to permit a jury's verdict to be altered by a judge only if it is not supported by sufficient evidence in the record, or if a reduction is compelled under the United States Constitution." *Id.* at 438. (citing *Honda Motor Co., Ltd v. Oberg*, 512 U.S. 415, 432 (1994)) (holding state courts must establish a procedural mechanism to challenge a jury verdict as unconstitutionally excessive). As a result, a defendant may prevail on its Rule 59(a) motion arguing excessive damages only if it shows: 1) that the evidence before the trial court is insufficient to support the jury's damages award; or 2) that the damages awarded by the jury are so excessive as to violate the Due Process Clause of the Fifth or Fourteenth Amendments to the United States Constitution. *Id.*

## **DISCUSSION**

### **Motion for Judgment as a Matter of Law**

¶ 13 The Virgin Islands Civil Rights Act states:

(1) It shall be an unlawful discriminatory practice:

(a) For an employer, because of age, race, creed, color, national origin, place of birth, sex, disability and/or political affiliation of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

...

(15) In addition to other remedies, any person who has been discriminated against as defined in this section may bring an action for compensatory and punitive damages in any court of competent jurisdiction. The court in such action shall award to the plaintiff reasonable attorney's fees and costs of the action, in addition to any judgment in favor of the plaintiff.

10 V.I.C. § 64(1)(a); (15).

¶ 14 Pursuant to the statutory language, to permit a finding of intentional age discrimination under VICRA, Cherubin was required to prove by the preponderance of the evidence that LIAT was his employer; that LIAT terminated him from his employment; that LIAT terminated him because of his age; and that he suffered damages as a result. Accordingly, following trial, the jury was instructed as follows:

In this particular case, Mr. Cherubin must prove all the elements of his claim of age discrimination pursuant to Section 64 of the Virgin Islands Civil Rights Act by a preponderance of the evidence.

He must prove the following elements: that LIAT was Mr. Cherubin's employer; that LIAT terminated Mr. Cherubin from his employment; that LIAT's basis for terminating Mr. Cherubin was his age; and that Mr. Cherubin suffered damages as a result.

LIAT has given nondiscriminatory reasons for its decision to terminate Mr. Cherubin. If you disbelieve LIAT's explanation for its decision, then you may, but you are not required to, find that LIAT terminated Mr. Cherubin because of his age.

Trial Tr. Vol. 2, 165-66.

¶ 15 Both parties approved these instructions and neither proposed any corrections or alternative instructions regarding the elements Plaintiff was required to prove. The instructions given are consistent with case law which permits an inference of discriminatory intent from the falsity of a defendant's proffered reasons for the action taken. *See e.g., Rideout v. JBS USA, LLC*, 716 F.3d 1079, 1086 (8<sup>th</sup> Cir. 2013) ("Demonstrating that [defendant's] reasons are unworthy of credence would support a finding of age discrimination because a trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose.") (citations and internal quotation marks omitted); *Machinick v. PB Power, Inc.*, 398 F.3d 345, 351 (5<sup>th</sup> Cir. 2005) ("evidence demonstrating the falsity of the defendant's explanation, taken together with the prima facie case, is likely to support an inference of discrimination even without further evidence of [the] defendant's true motive.") (citations omitted).

¶ 16 At trial, LIAT reiterated the substance of the June 4, 2015 letter, stating that it fired Cherubin for gross misconduct by repeatedly acting without authority and contrary to company policies and directives. The March 3 and March 5, 2015 letters faulted Cherubin for cashing a third party check with company funds, submitting inconsistent and deficient sales reports, and accepting daily sales proceeds from a third party contractor that were less than the amount due, and attempting to cover the shortage from the next day's proceeds. The March letters advised Cherubin that he would be subject to termination if he repeated the "same or substantially the same" infractions addressed in the letters. LIAT's human resource manager testified that Cherubin did not repeat the conduct he had been warned about in either the March 3 letter or the March 5 letter. Trial Tr. Vol. 1, 43-45.

¶ 17 By the June 4, 2015 termination letter and at trial, LIAT claimed that Cherubin was justifiably terminated for failure to "promptly and fully abide by all Company procedures and directives" and to timely reimburse LIAT for the \$1,190 cash shortage as required by the March 5, 2015 letter. Cherubin did reimburse LIAT the missing funds on April 14, 2015, 15 days after LIAT's deadline, which tender LIAT accepted. LIAT terminated Cherubin two months later. When asked about the time lapse of Cherubin's termination at trial, the human resource manager stated that because Cherubin was a "senior manager with the company," the company needed to "take some time to get to that decision." Trial Tr. Vol. 2, 80.

¶ 18 During the time between the March 2015 letters and Cherubin's termination, on May 5, 2015, LIAT sent all employees an email notifying them that "LIAT will be a smaller airline in 2015," advising that "we must remove the costs" of the larger operation, and inviting employees "to apply for Voluntary Separation or Early Retirement." Pl. Ex. 3.

¶ 19 At trial, William Bohlke, Jr. was asked to describe Cherubin's personality before he was terminated. He responded: "Fantastic. He was the best employee on the airport, and that goes for all the airlines and my company. You couldn't find a better employee than Mr. Cherubin." Trial Tr. Vol. 2, 53.

¶ 20 Plaintiff argues that the trial evidence permitted the jury's inference that LIAT's proffered reasons for terminating Cherubin were mere pretext. "Pretext exists when an employer does not honestly represent its reasons for terminating an employee." *Miller v. Eby Realty Grp. LLC*, 396

F.3d 1105, 1111 (10th Cir. 2005) (citing *The American Heritage Dictionary of the English Language* (4th ed. 2000) (pretext is defined as (1) “An ostensible or professed purpose; an excuse” and (2) “An effort or strategy intended to conceal something.”)). “In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as ‘affirmative evidence of guilt.’” *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 147 (2000) (citing *Wright v. West*, 505 U.S. 277, 296 (1992); see also *Wilson v. United States*, 162 U.S. 613, 620-21 (1896); 2 J. Wigmore, *Evidence* § 278(2), p. 133 (J. Chadbourn rev. ed. 1979).)

¶ 21 While rejection of the employer’s explanation does not compel a finding of discrimination, “[t]he factfinder’s disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant’s proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination.” *Id.* Here, if the jury inferred that LIAT’s proffered reasons for termination were false, then the jury could plausibly infer from that falsity that LIAT fired Cherubin because of his age.

¶ 22 The Supreme Court of the Virgin Islands has yet to provide specific guidance for age discrimination claims under 10 V.I.C § 64 (1)(a). “There is no substantive case law from the Virgin Islands Supreme Court or lower Territory courts that interpret this statute in an age discrimination case.” *Bass v. Fed. Express Corp.*, 2017 U.S. Dist. LEXIS 71781, at \*7-8 (D.V.I. 2017). The only Virgin Islands case to address age discrimination under VICRA employed the standard of the federal Age Discrimination in Employment Act of 1967 (ADEA) and Title VII of the federal Civil Rights Act of 1964, the burden shifting framework from *McDonnell Douglas Corp. v. Green*. 411 U.S. 792 (1973). See *Haynes-Ross v. Hovenssa LLC*, 2015 U.S. Dist. LEXIS 53255, 2015 WL 1882873, at \*2 (D.V.I. 2015) (collecting cases). However, the Supreme Court has directed, in the context of addressing the sufficiency of a plaintiff’s claim of racial discrimination under VICRA, that the statutory language itself guides a court’s review, rather than any borrowed standard from

federal or other state discrimination laws. *See Rennie v. Hess Oil Virgin Islands Corporation*, 62 V.I. 529, 551 (V.I. 2013) (addressing 10 V.I.C. § 3).

¶ 23 Defendant cites *Pickering v. Arcos Dorados P.R., Inc.*, 2015 V.I. LEXIS 133 (V.I. Super. 2015), an action alleging discrimination under the federal ADEA, and employing the applicable standard for a claim under that federal statute. Similarly, LIAT relies upon *Simmons v. Sykes Enters.*, 647 F.3d 943 (10th Cir. 2011) and other federal cases which interpret the ADEA or the federal Civil Rights Act. As noted, the Supreme Court in *Rennie* rejected the *McDonnell Douglas* burden-shifting framework in a race discrimination claim under VICRA. *Rennie*, 62 V.I. at 551.

¶ 24 In *Rennie*, the Supreme Court stated that “it is not clear why... any ...case interpreting the federal Civil Rights Act, is of any assistance in interpreting the Virgin Islands Civil Rights Act,” noting that VICRA is “significantly broader in scope than the federal Civil Rights Act.” *Rennie*, 62 V.I. at 551-52. So, instead of “grafting the *McDonnell Douglas* pleading framework onto the Virgin Islands Civil Rights Act...we believe the better methodology is to simply look to the statutory language itself.” *Id.* “The Virgin Islands Civil Rights Act provides that all individuals... are entitled to ‘equal treatment with respect to employment, pay and working conditions in any and all businesses and industry,’ and correspondingly prohibits employers from ‘directly, indirectly or by subterfuge, deny[ing] employment in or at such business to any applicant therefore, or engage in or permit any discrimination or differential in pay or working conditions for workers doing the same work.’” *Id.* (citing 10 V.I.C. § 3.)

¶ 25 At trial, Cherubin testified that he believes the fact of the existence of the early retirement or voluntary separation agreement program offered by LIAT to all of its employees is evidence that LIAT terminated him because of on his age. LIAT rightly states that the mere existence of an early retirement program alone can not support an inference of age discrimination. *See Gray v. York Newspapers, Inc.*, 957 F.2d 1070, 1081 (3d Cir. 1992) (citations omitted). However, in downsizing, LIAT offered the program to employees one month prior to terminating Cherubin, and LIAT’s human resource manager testified that Cherubin was not eligible for the package because he was over the age of 65. “Evidence of a corporate atmosphere hostile to older employees can, if sufficient together with other evidence of pretext, support a reasonable inference of age discrimination.” *Madel v. FCI Mktg.*, 116 F. 3d 1247, 1252 (8th Cir. 1997). Here, that evidence,

taken together with the aforementioned other evidence of pretext, is sufficient to permit a jury inference of age discrimination from the totality of the evidence, and the Court will not substitute its view of the evidence for that of the jury.

### **Motion for New Trial**

¶ 26 In general, motions for a new trial under Rule 59 are disfavored and “granted with great caution.” *Gulf Coast Shippers Ltd. P’ship v. DHL Express (USA), Inc.*, 2016 U.S. Dist. LEXIS 163165, at \*5-6 (D. Utah 2016). New trials are especially disfavored with respect to a jury’s damages award. “What is most relevant in this case is not the judicial conscience, it is the conscience of the community as represented by the six people who served on this trial jury.” *Malandris v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 703 F.2d 1152, 1170 (10<sup>th</sup> Cir. 1981) (*en banc*). A damages award is considered “inviolable,” unless the award is “so excessive as to shock the judicial conscience and to raise an irresistible inference that passion, prejudice, corruption or other improper cause invaded the trial.” *Gulf Coast Shippers*, 2016 U.S. Dist. LEXIS 163165, at \*6. In reviewing a damages award for excessiveness, the Court is guided by the principle that “[it] is within the virtually exclusive purview of the jury to evaluate credibility and fix damages.” *United Int’l Holdings, Inc. v. Wharf (Holdings) Ltd.*, 210 F. 3d 1207, 1230 (10<sup>th</sup> Cir. 2000).

¶ 27 The Superior Court has explained that, under Rule 59(a), “[t]he authority to grant a new trial in a jury action is purely discretionary...” *Creative Minds, LLC v. Reef Broadcasting, Inc.*, at \*4 (V.I. Super. 2014). However, unless the court is “convinced that the jury reached a seriously erroneous result because its verdict was against the clear weight of the evidence, [the Court has] no discretion to order a new trial.” *Id.* (citing *Herman v. Hess Oil Virgin Islands Corp.*, 10 V.I. 521, (D.V.I. 1974) *aff’d*, 12 V.I. 240 (3d Cir. 1975)). As a result, “the appropriate test to be applied by the court in considering [a] motion for a new trial [is]... whether sufficient evidence existed on the record which, if accepted by the jury, could sustain the verdict.” *Id.* (citing *Frank v. Atl. Greyhound Corp.*, 177 F. Supp. 922, 923 (D.D.C 1959) *aff’d*, 280 F.2d 628 (D.C. Cir. 1960)).

¶ 28 At trial, Cherubin and two other witnesses testified that LIAT’s termination of his employment caused him substantial and continuing emotional pain and suffering. Alvin Canaii, a long-time friend who spent time with Cherubin “very, very, very regularly,” multiple times per

week, testified that “you could not ask for a more loyal employee than [Cherubin].” Trial Tr. Vol. 1, 59. Cherubin “never thought that after devoting 45 plus years and given that company dedicated service, sometimes neglecting his own family to take care of their business, that they would have treated him like that. You could see that he was visibly shaken. I would say more than shaken. He was visibly broken.” *Id.* Canaii testified that after the termination, he visited Cherubin regularly, finding him “almost in a daze mumbling to himself.... It shattered him. He was totally demoralized. He did not even want to leave his house for several days... he became very sluggish afterwards.... And from then on, you know, I just never seen him bounce back to the same person he was, always smiling, always had a decent composure. You couldn’t ask for a more respectable person than Mr. Cherubin. And he’s never been the same person from that day.” *Id.* at 59-60.

¶ 29 William Bohlke, who operates his business at the Henry Rohlsen Airport, testified that he has “known Bill [Cherubin] since 1971 or ’72.” Trial Tr. Vol. 2, 51. During the 70’s and 80’s, when he wasn’t flying off island, Bohlke saw Cherubin “probably every day.... Bill Cherubin, his job was LIAT and that was synonymous with who he was. That was his responsibility and he took it his whole life as a Liat manager.” *Id.* at 52. Asked whether he noticed any changes in Cherubin’s mental or emotional state after his termination, Bohlke replied: “Absolutely. He was stressed out, just completely – he wasn’t himself. Mr. Cherubin was in his 70’s, early 70’s, at that time and it just devastated him mentally.” *Id.* at 53.

¶ 30 Cherubin himself testified: “It was a surprise because I did not expect this kind of thing should come to me after my years of service and what I do for the company.” *Id.* at 19. Asked to describe how he felt when terminated, Cherubin responded: “I cannot even explain to you. It is terrible. It’s like a bombshell. I wasn’t expecting anything like that to happen to me.” *Id.* at 21. Both parties note in their briefing that Cherubin broke down emotionally on the witness stand as he testified. “For the respect I have in this community, it was a shame for me to face them and my family. I could not go out as I wanted.” *Id.*

¶ 31 “For emotional or non-physical damages, the court evaluates the effects of the incident on the plaintiff and will uphold awards only for long-lasting changes to an individual’s mental condition, reputation, or financial situation.” *Antilles*, 64 V.I. at 430 (citation omitted).

¶ 32 Defendant cites *Gumbs v. Pueblo Int'l. Inc.*, for the proposition that “there must be some rational relationship between the specific injury sustained and the amount awarded.” 823 F.2d at 773. The Court does not disagree. However, “awards for pain and suffering are highly subjective and should be committed to the sound discretion of the jury, especially when the jury is being asked to determine injuries not easily calculated in economic terms.” *Eich v. Board of Regents for Cent. Missouri State Univ.*, 350 F. 3d. 752, 763 (8th Cir. 2004).

¶ 33 In this case, the jury’s award far exceeds the economic loss Plaintiff presented at trial, such that the majority of the jury’s award was necessarily intended to compensate Cherubin for his emotional pain and suffering. With respect to damages awarded for pain and suffering, because there is no precise way in which to calculate such damages, the jury’s award should only be disturbed “when the quantum of damages found by a jury is clearly outside the maximum limit of a reasonable range.” *Paper Corp. v. Schoeller Technical Papers, Inc.* 807 F. Supp. 337, 350 (S.D.N.Y 1992) (citations omitted). In light of the evidence presented on the issue of damages, the Court will not substitute its view of the evidence and evaluation of damages for that of the jury and does not find that the quantum of damages awarded are clearly outside the maximum limit of a reasonable range.

¶ 34 Under *Antilles*, the trial court may award a new trial if the damages are so excessive as to violate the Due Process Clause of the Fifth or Fourteenth Amendments to the United States Constitution. 64 V.I. at 438. In its Motion for New Trial, LIAT cites *Antilles*, but presents no analysis that the jury’s award is so excessive as to deprive LIAT of its property without due process of law. Ironically, such an analysis here could support the argument that granting a new trial on Defendant’s post-trial motion alleging excessive damages would actually deprive Cherubin of his property right in the judgment without due process. In the earliest Virgin Islands case analyzing the propriety of reducing a trial judgment on motion for remittitur, as *Antilles* notes, “the Superior Court declined to reduce the judgment because it concluded that doing so would violate the Fifth and Fourteenth Amendments of the United States Constitution because it would be tantamount to ‘a taking of private property [that is, a portion of a chose in action] without due process.’” *Id.* at 430 (citing *Schroeder v. Hackett*, 13 V.I. 242, 246 (V.I. Super. 1977)). Suffice it to say, without

the presentation of any argument or analysis by which LIAT claims that the jury's verdict deprives it of property without due process, the Court summarily finds that such claim fails.

¶ 35 Because LIAT's Rule 59 Motion has not shown that the evidence before the Court was insufficient to support the jury's damages award, and LIAT presents no basis for claiming that the damages award is so excessive as to violate LIAT's constitutional right to due process, its Motion for New Trial must be denied.

### CONCLUSION

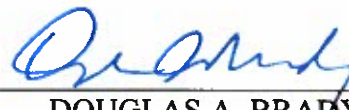
¶ 36 Finding that the totality of the trial evidence was sufficient to permit a jury inference that LIAT's proffered reasons were false, and that LIAT discharged Cherubin because of his age in violation of the Virgin Islands Civil Rights Act, the Court will deny LIAT's Renewed Motion for Judgment as a Matter of Law. Evidence of Cherubin's emotional pain and suffering following his termination was sufficient that the Court cannot find that the jury's verdict was seriously erroneous as against the clear weight of the evidence. Accordingly, the Court will not interfere with the jury's award, and LIAT's Motion for New Trial will be denied.

For the reasons set forth above, it is hereby

ORDERED that LIAT's Renewed Motion for Judgment as a Matter of Law pursuant to V.I. R. Civ. P. 50(b) is DENIED. It is further

ORDERED that LIAT's Motion for New Trial pursuant to V.I. R. Civ. P. 59(a) is DENIED.

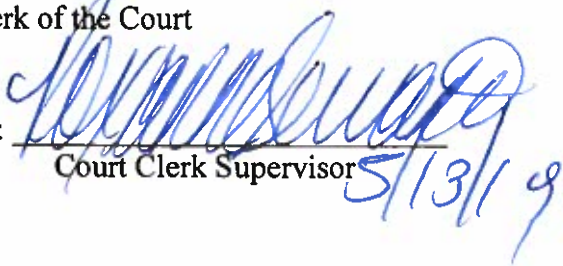
DATED: May 13, 2019.



DOUGLAS A. BRADY, JUDGE  
SUPERIOR COURT OF THE  
VIRGIN ISLANDS

ATTEST:

ESTRELLA H. GEORGE  
Clerk of the Court

By: 

Court Clerk Supervisor 5/13/19