

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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HALEIGH BREEST,

Plaintiff,

- v -

PAUL HAGGIS,

Defendant.

INDEX NO. 161137/2017

MOTION DATE 01/20/2023

MOTION SEQ. NO. 036

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 036) 719, 720, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032

were read on this motion to/for SET ASIDE VERDICT.

BACKGROUND

After a jury trial in this action where Plaintiff alleged Defendant raped and sexually assaulted her, the jury returned a verdict in favor of Plaintiff. The jury awarded Plaintiff 7.5 million dollars in compensatory damages and 2.5 million dollars in punitive damages.

Defendant now moves to set aside the verdict, arguing that numerous and substantial errors by the Court deprived him of a fair trial, and alternatively that the damages awarded by the jury were excessive.

For the reasons stated below, the motion is denied in its entirety.

THERE IS NO BASIS TO VACATE THE VERDICT IN THE INTEREST OF JUSTICE

Defendant's motion pursuant to CPLR §4404(a) to set aside the jury verdict in the interest of justice is denied in its entirety. A seventeen-day jury trial was held in front of this court and at the end of the trial the jury found that defendant was liable for compensatory and punitive damages.

CPLR §4404(a) provides that:

After a trial a cause of action or issue triable of right by a jury, upon motion of any party or on its own initiative, the court may set aside a verdict or a 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.

In considering whether to set aside a jury verdict, the court must proceed with caution, in the absence of an indication that substantial justice has not been done, the successful litigant is entitled to the benefits of a favorable jury verdict and a jury verdict should not be set aside as against the weight of the evidence unless the jury could not have reached its verdict on any fair interpretation of the evidence. *McDermott v. Coffee Beanery, Ltd.*, 9 A.D.2d 195 (1st Dept 2004).

The moving papers fail to establish a basis to set aside this verdict in the interest of justice. Defendant has not shown that he was deprived of substantial justice or that any alleged misconduct by counsel "unduly affected the verdict. *Selzer v. New York City Transit Auth.*, 100 A.D.3d 157, 162 (1st Dep't 2012).

It is well-established that the "trial court has broad authority to control the courtroom, rule on the admission of evidence, elicit and clarify testimony, expedite the proceedings and to admonish counsel and witnesses when necessary." *Messinger v. Mount Sinai Med. Ctr.*, 15

A.D.3d 189, 189 (1st Dep't 2005). "This power to control the case necessarily is of a discretionary nature, and its exercise is not reviewable save for a clear abuse of discretion." *Feldsberg v. Nitschke*, 49 N.Y.2d 636, 643 (1980). Defendant's arguments that he was prejudiced by certain rulings is insufficient; "evidence of guilt (for example, of a documentary type as here, or an eyewitness identification or a confession) is always prejudicial in a familiar sense of that word; it is expected and supposed to be so. Merely invoking the word 'prejudice' does not, in and of itself, preclude admission of relevant evidence unless some evidentiary prohibition is violated." *People v. Colavito*, 87 N.Y.2d 423, 429 (1996) (internal citations omitted).

Defendant fails to identify "errors in the trial court's rulings on the admissibility of evidence." *Russo v. Levat*, 143 A.D.3d 966, 968 (1st Dept 2016). He also does not show that the cumulative effect of the Court's purportedly erroneous rulings "deprived [defendant] of a fair trial." *Country Park Child Care, Inc. v. Smartdesign Architecture PLLC*, 129 A.D.3d 1636, 1638 (4th Dep't 2015).

Most of defendant's motion essentially seeks re-argument of prior issues which were briefed by counsel and determined by the Court. This is true of defendant's arguments regarding the admission of the Jane Doe Evidence, the rulings on the admission of deposition testimony, the admission of expert testimony, the outcry witnesses, and the determination to exclude certain evidence including defendant's statements to the Manhattan District Attorney's office and prior settlement demands.

The court does not find that defendant was deprived of a fair trial or that the interest of justice would be served by vacating the verdict and ordering a new trial. Rather defendant's

arguments regarding this Court's "constellation" of errors are more appropriately left for appellate review.

The primary evidence in the case was the testimony of the Plaintiff and Defendant. At the end of the day, the jury credited Plaintiff's testimony, which described a forced and unwanted sexual assault and rape, and found Defendant's version of a kittenish and flirtatious Betty Boop character, who bragged about her skills in fellatio, lacking in credibility.

THE COMPENSATORY DAMAGES AWARD WAS PROPER AND NOT EXCESSIVE

The \$7.5 million compensatory damages award was not excessive. Rape causes considerable trauma and emotional, social, and psychological injuries that cannot be overstated. Compensatory damages in such cases must consider "[t]he social and emotional betrayal and humiliation, the isolation, the threat and violation to her self-esteem, physical, psychic and emotional integrity and health, the fear for her life, the utter sense of hopelessness and helplessness" that rape survivors experience. *Deborah S. v. Diorio*, 153 Misc. 2d 708, 715 (N.Y. Civ. Ct. N.Y. Cnty. 1992), *aff'd as modified*, 160 Misc. 2d 210 (1st Dep't 1994). As the Supreme Court has noted, "[s]hort of homicide, [rape] is the ultimate violation of self." *Coker v. Georgia*, 433 U.S. 584, 597 (1977).

"The question of damage is for the jury." *France & Canada S.S. Corp. v. Berwind-White Coal Mining Co.*, 229 N.Y. 89, 95 (1920). The jury's damages verdict is "entitled to great deference based upon its evaluation of the evidence." *Ortiz v. 975 LLC*, 74 A.D.3d 485, 486 (1st Dep't 2010). "Only where the award 'deviates materially from what would be reasonable compensation' is a new trial on damages to be granted." *Vaval v. NYRAC, Inc.*, 31 A.D.3d 438, 438 (2d Dep't 2006) (quoting CPLR 5501).

Plaintiff testified extensively regarding her injuries. This testimony alone was sufficient to entitle her to compensatory damages. *Laurie Marie M. v. Jeffrey T.M.*, 159 A.D.2d 52, 56 (2d Dep’t 1990), *aff’d sub nom. Laurie Marie M. v. Jeffery T.M.*, 77 N.Y.2d 981 (1991). Plaintiff testified that after the rape she had dating, was not able to have normal intimate relations with men and suffered from anxiety and flashbacks. Plaintiff also testified that because of the rape, she had increased anxiety and body image issues. Plaintiff was fired from her job at the Cinema Society because she did not remain silent about the rape. Plaintiff’s damages were further established by expert testimony.

\$7.5 million was a reasonable compensatory damages award in light of these serious, long-lasting injuries. “[P]rior damage awards in cases involving similar injuries . . . guide and enlighten [courts] with respect to determining whether a verdict in a given case constitutes reasonable compensation.” *Miller v. Weisel*, 15 A.D.3d 458, 459 (2d Dep’t 2005). However, “[t]his is not to say that the amount of damages awarded or sustained in cases involving similar injuries are in any way binding upon the courts in the exercise of their discretion.” *Senko v. Fonda*, 53 A.D.2d 638, 639 (2d Dep’t 1976). Rather, prior damages awards in similar cases “need not restrain [the court], for the reason that no two cases morally can present precisely similar circumstances of pain, suffering, impairment, or of loss.” *Mullady*, 65 A.D. at 551.

The compensatory damages here are comparable to damages awarded in similar cases. In *Egan v. Gordon*, the court awarded \$13.8 million in compensatory damages to a rape and sexual assault survivor who “continuously relives” the abuse through “flashbacks,” was diagnosed with post-traumatic stress disorder, experiences hypervigilance, sleep disturbance, and whose career and personal life were upended by the abuse she suffered. (November 10, 2022 Decision and Order in *Egan v. Gordon*, No. 904231-20 (N.Y. Sup. Ct. Albany Cty. Nov. 10, 2022) NYSCEF

No. 26). In *McQuillin v. Perez*, a jury awarded \$15 million in damages, including \$6 million in compensatory damages—\$9.1 million in 2022 dollars—to a 32-year-old woman who was raped once by a professional baseball player. No. 2001-0194-CA-17, 2005 WL 2398200 (Fla. Cir. Ct. 2005); see also *C.R.R. vs. Bresnniel Jansen*, 18 FJVR 2- 16, 2017 WL 7906461 (Fla. Cir. Ct. 2017) (awarding \$49.2 million total damages, including \$19.2 million in compensatory damages, to teen survivor of rape and sexual assault who suffered psychological injuries, “constant fear,” and “anxiety”); *Santos-Vidal v. Hongye L.L.C.*, No. KC067686, 2017 WL 5186772 (Cal. Super. Ct. Los Angeles Cnty. 2017) (\$15.5 million for pain and suffering to rape and sexual harassment survivor); *Doe v. Delarosa*, No. 51-2012-CA-006209, 2014 WL 7927468 (Fla. Cir. Ct. 2014) (\$12.4 million in compensatory damages to survivor for single incidence of sexual assault who suffered “mental anguish” and “emotional anguish”); *MS v. PCM Barker Cypress*, No. 20120-39725, 2012 WL 1243849 (Tex. Dist. 2012) (\$12 million compensatory damages to single adult rape survivor for pain and suffering, loss of normal life, and emotional distress); *K.C. v. Going Places*, No. 2017-L-011405, 2022 WL 1617851 (Ill. Cir. Ct. 2016) (\$7.8 compensatory damages for pain and suffering to single adult sexual assault survivor); *Plaintiff v. Luster*, JVR No. 412802, 2003 WL 23519466 (Cal. Ct. Oct. 1, 2003) (awarding \$10 million in compensatory damages and \$10 million in punitive damages to victim of single rape who “suffered psychological injuries resulting in post-traumatic stress disorder”); *Jane Doe, Pro Ami v. Crime Prevention Agency*, 5 JVR No. 1806080054, 2018 WL 2949238 (Ga. State Ct. 2018) (awarding \$1 billion in compensatory damages for pain and suffering of teenage girl in single incidence of rape).

In addition, public attitudes and reasonableness have changed in recent history regarding rape and sexual assault. The #MeToo movement has significantly altered the public conscience

on these issues in the years since it began in 2017. When most of the cases cited by Defendant were decided, the public, juries, and courts were much more likely to minimize the crime and the impact of rape. Insofar as the jury's award in Ms. Breest's case reflects the more enlightened collective views of today, it should not be disregarded or minimized. *See Witherspoon v. State of Ill.*, 391 U.S. 510, 520 n.15 (1968) (noting that "one of the most important functions any jury can perform" is maintaining a link between "community values" and the law, without which "the determination of punishment would hardly reflect the evolving standards of decency that mark the progress of a maturing society").

THE PUNITIVE DAMAGES AWARD WAS NOT EXCESSIVE

"Whether to award punitive damages in a particular case, as well as the amount of such damages, if any, are primarily questions which reside in the sound discretion of the original trier of the facts . . . and such an award is not lightly to be disturbed." *Nardelli v. Stamberg*, 44 N.Y.2d 500, 503 (1978). Only where "the amount of exemplary damages awarded . . . is so grossly excessive as to show by its very exorbitancy that it was actuated by passion" should such an award be reduced. *Id.* at 504. Factfinders are granted "wide latitude" in their "determination of the size of punitive awards." *Sawtelle v. Waddell & Reed, Inc.*, 304 A.D.2d 103, 109 (1st Dep't 2003).

The 3:1 ratio of the jury's compensatory to punitive damages award was more than reasonable. Cases involving harsh scrutiny of punitive damages largely involve instances, unlike this one, in which the punitive damages award greatly exceeds the compensatory damages award. *See Sawtelle v. Waddell & Reed, Inc.*, 304 A.D.2d 103, 114 (1st Dept 2003); *I. H. P. Corp. v. 210 Cent. Park S. Corp.*, 16 A.D.2d 461, 466 (1st Dept 1962), *aff'd*, 12 N.Y.2d 329

(1963); *Correia v. Suarez*, 52 A.D.3d 641, 642 (2d Dep't 2008); *Bell v. Helmsley*, No. 111085/01, 2003 WL 1453108 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 4, 2003).

A review of comparable cases also shows the award was reasonable. See, e.g., *Egan v. Gordon*, No. 904231-20 (N.Y. Sup. Ct., Albany Cty., Nov. 10, 2022) NYSCEF No. 26 (awarding \$5 million on punitive damages for sexual assault survivor); *Doe v. Delarosa*, No. 2012-CA-006209, 2014 WL 7927468 (Fla. Cir. Ct. 2014) (awarding \$35 million in punitive damages to survivor for single incidence of sexual assault); *Rode v. Credio*, No. CV-14-02354, 2016 WL 5109866, at *1 (D. Ariz. Sept. 20, 2016) (awarding \$5 million in punitive damages in single incidence of violent rape); *McQuillin v. Perez*, No. 2001-0194-CA, 2005 WL 6499368 (Fla. Cir. Ct. 2005) (awarding \$9 million in punitive damages for single incidence of rape against young woman by professional baseball player); *Lee ex rel. Lee v. Borders*, 764 F.3d 966, 973-75 (8th Cir. 2014) (upholding \$3 million punitive damages award for single rape victim); *Rape Victim v. Florman*, JVR No. 57760, 1990 WL 460234 (Va. Cir. Ct. 1990) (awarding \$7 million in punitive damages to victim of single incidence of rape who suffered post-traumatic stress disorder).

WHEREFORE it is hereby:

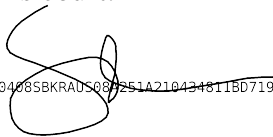
ORDERED that defendants' motion is denied in its entirety; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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1/24/2023

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE