Plaintiff,

v.

TOWNSHIP OF UNION,

Defendant.

OPINION

LINARES, Chief District Judge.

This matter comes before the Court by way of Defendant Township of Union ("Defendant" or the "Township")'s motion for judgment as a matter of law ("JMOL") or, alternatively, for a new trial. (ECF No. 324).[1] Plaintiff, Ms. Maryanne Cosimano, has opposed Defendant's motion (ECF No. 329), and Defendant has replied to that opposition (ECF No. 335). The Court has reviewed all papers filed in support of and in opposition to the pending motion, and decides this matter without oral argument pursuant to Federal Rule of Civil Procedure 78. For the reasons discussed below, Defendant's motion is granted in part and denied in part.

I. Background

Both the Parties and this Court are quite familiar with the facts of this case. Accordingly,

[1] While Plaintiff originally named the Township Administrator, Frank Bradley, and the Township Police Director, Daniel Zieser as Defendants to this matter, Plaintiff voluntary dismissed the claims against Mr. Bradley prior to the commencement of trial, and this Court granted Director Zieser JMOL after the jury returned a verdict against Director Zieser (ECF Nos. 301, 203). Additionally, after the commencement of the trial, Plaintiff conceded to the dismissal of her claim for retaliation under 42 U.S.C. § 1983. This Opinion and the accompanying Order do not in any way reverse or alter the dismissal of the claims against Frank Bradley or Director Zieser or the dismissal of Plaintiff's claim under Section 1983.

motion, Plaintiff conceded to the dismissal of her retaliation claim under 42 U.S.C. § 1983. Additionally, the Court denied Defendants' motion with respect to the Township's liability under the New Jersey Law Against Discrimination ("NJLAD"), granted Defendants' motion with respect to Plaintiff's claims for punitive damages, and reserved on the motion as to Zieser's liability for aiding and abetting the Township's NJLAD violation. (ECF Nos. 286, 287).

On April 13, 2017, a jury returned a verdict in favor of Ms. Cosimano, and against both Defendants, in the amount of $355,486.00. (ECF No. 289). Specifically, the jury found the Township liable for a violation of the NJLAD, and also found Defendant Zieser liable for aiding and abetting the Township in its NJLAD violation. (ECF No. 293).

Defendants renewed their motion for JMOL as to Defendant Zieser's liability at the conclusion of the trial, after the jury returned a verdict against both Defendants. On April 27, 2017, after reviewing briefing from both Parties on the renewed motion for JMOL, this Court granted Defendants' motion for JMOL as to Director Zieser's liability. (ECF Nos. 301, 302). On June 22, 2017, this Court entered a Judgment in Plaintiff's favor (ECF No. 316), which Judgment was amended on July 14, 2017 (ECF No. 320).

Defendant Township of Union filed the pending motion for JMOL or, alternatively, for a new trial, on July 19, 2017. (ECF No. 324, "Def.'s Mov. Br."). Plaintiff filed an opposing brief on August 7, 2017 (ECF No. 329, "Pl.'s Opp. Br.") and Defendant replied to same on August 14, 2017 (ECF No. 336). This matter is now ripe for the Court's adjudication.

fair and reasonable inference, there is insufficient evidence from which a jury could reasonably find liability." *Wittekamp v. Gulf & Western Inc.*, 991 F.2d 1137, 1141 (3d Cir. 1993). "Although judgment as a matter of law should be granted sparingly," a scintilla of evidence is not enough to sustain a verdict of liability. *Walter v. Holiday Inns, Inc.*, 985 F.2d 1232, 1238 (3d Cir.1993). "The question is not whether there is literally no evidence supporting the party against whom the motion is directed but whether there is evidence upon which the [factfinder] could properly find a verdict for that party." *Patzig v. O'Neil*, 577 F.2d 841, 846 (3d Cir.1978) (citation omitted) (quotation omitted). Thus, although the court draws all reasonable and logical inferences in the nonmovant's favor, an order granting judgment as a matter of law is appropriate if, upon review of the record, it is apparent that the verdict is not supported by legally sufficient evidence. *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1166 (3d Cir. 1993).

B. Motion for a New Trial

A motion for JMOL that follows a jury verdict "may include an alternative or joint request for a new trial under Rule 59." Fed. R. Civ. P. 50(b). Federal Rule of Civil Procedure 59(a) provides that:

> [t]he court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows: (A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court ...

Fed. R. Civ. P. 59(a). It is within the discretion of the district court to grant a new trial. *Wagner v. Fair Acres Geriatric Ctr.*, 49 F.3d 1002, 1017 (3d Cir. 1995). Although Rule 59 does not detail

(D.N.J.1992) (citations omitted), *aff'd,* 4 F.3d 1153 (3d Cir. 1993).

When reviewing a motion for a new trial, a court must view the evidence in the light most favorable to the party for whom the verdict was returned. *Wagner by Wagner v. Firestone Tire & Rubber Co.,* 890 F.2d 652, 656 (3d Cir.1989). Where a motion for a new trial is based primarily on the weight of the evidence, the discretion of the trial court is limited. *Klein v. Hollings,* 992 F.2d 1285, 1290 (3d Cir.1993); *see also Greenleaf v. Garlock, Inc.,* 174 F.3d 352, 366 (3d Cir.1999). Indeed, "new trials because the verdict is against the weight of the evidence are proper only when the record shows that the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks [the] conscience." *Williamson v. Conrail,* 926 F.2d 1344, 1353 (3d. Cir. 1991); *see also Greenleaf,* 174 F.3d at 366. Although a court is permitted to consider the credibility of trial witnesses and to weigh evidence, it must "exercise restraint to avoid usurping the jury's primary function." *Hurley v. Atl. City Police Dep't,* 933 F. Supp. 396, 403 (D.N.J.1996), *aff'd,* 174 F.3d 95 (3d Cir.1999).

III. Discussion

A. Defendant's motion for JMOL

Defendant contends that this Court should grant JMOL in its favor for several reasons. First, the Township argues that Plaintiff failed to establish her claim of gender discrimination under the NJLAD. (Def.'s Mov. Br. at 10-24). Second, Defendant contends that the Township must be

The Court first addresses Defendant's argument that Plaintiff failed to prove her claim of sex discrimination. Claims under the NJLAD follow the burden-shifting test espoused in *McDonell Douglas Corp v. Green*, 411 U.S. 792 (1973). Under that analysis, a plaintiff has the initial burden of setting forth a *prima facie* case for sex discrimination. To state a *prima facie* case of sex discrimination, a plaintiff must show (1) that she was a member of a protected class, and (2) that she was treated less favorably than other employees who were similarly situated but who were not female.

Once a plaintiff satisfies the above *prima facie* showing, the burden of production (but not persuasion) then shifts to the Defendant. Specifically, a defendant in an NJLAD case is required to articulate a legitimate, non-discriminatory reason for its adverse employment action against the plaintiff. Assuming the defendant meets that burden of production, the burden then shifts back to the plaintiff, who must show that the reason articulated by defendant for the adverse employment decision was merely a pretext for discrimination.

Here, the Township contends that Plaintiff failed to satisfy the second element of her *prima facie* case of sex discrimination—namely, that she was treated differently from "similarity situated" male employees of the Township. (Def.'s Mov. Br. at 17-20). Specifically, the Township contends that Plaintiff's only comparator, Paul Bruno, "was not similarly situated as a matter of law." (Id. at 17).

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