UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ASSEMBLY POINT AVIATION, INC.,

Plaintiff,

v. **1:13-CV-298 (FJS/DJS)**

RICHMOR AVIATION, INC.,

Defendant.

APPEARANCES **OF COUNSEL**

WHITEMAN OSTERMAN & HANNA LLP
One Commerce Plaza
Suite 1900
Albany, New York 12260
Attorneys for Plaintiff

JOHN J. HENRY, ESQ.
ROBERT S. ROSBOROUGH, IV, ESQ.

TABNER, RYAN & KENIRY, LLP
18 Corporate Woods Boulevard
Albany, New York 12211-2605
Attorneys for Defendant

WILLIAM RYAN, JR., ESQ.
BRIAN M. QUINN, ESQ.

SCULLIN, Senior Judge

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Pending before the Court is Plaintiff's motion for judgment as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure or, in the alternative, for a new trial pursuant to Rule 59 of the Federal Rules of Civil Procedure. *See* Dkt. No. 102.

II. BACKGROUND

Plaintiff owns a Gulfstream IV aircraft ("Aircraft"). Defendant maintains, services, provides crews for, and brokers charter flights on third parties' aircraft. In January of 2001, Plaintiff and Defendant entered into a lease agreement whereby Defendant would procure charter flights on the Aircraft in exchange for a 15% commission of the resulting charter revenue. Specifically, the lease provided that Defendant would "remit 85% of the charter rate per hour flown" to Plaintiff. The Lease incorporated by reference the parties' Management Agreement. The Management Agreement defines the term "Flight Hour" to mean "the time of take-off to landing (i.e., wheels up to wheels-down), as recorded time on the Aircraft hour meter, or, if nonfunctional for any reason, as indicated in the journey log entries."

The parties do not dispute that they intended the Lease to limit Plaintiff's payment to hours that the Aircraft was actually in the air during a charter flight. Nor do the parties dispute that Plaintiff received payment for all hours that the Aircraft actually flew. Rather, the critical issue in this case is whether the parties orally modified the Lease to provide that Defendant would remit to Plaintiff payment for unused flight hours accrued through a contract Defendant entered into with Sportsflight Air., Inc. ("SFA").

In early 2002, Defendant explained that he had arranged an opportunity whereby Plaintiff's aircraft could be leased to the United States government for a high volume of charter flights. Defendant's prospective client was SFA, a subcontractor that would in turn charter the Aircraft to the government. Defendant reported to Plaintiff that SFA agreed to guarantee 250 hours during the first six months. SFA thereafter had the option to renew month-to-month for a

minimum of fifty flight hours per month. The SFA contract, while identifying the Aircraft by its registration number, does not mention Plaintiff.

Plaintiff asserts that it agreed to forego certain of its rights under the Lease because Defendant represented that chartering the Aircraft to SFA would entitle Plaintiff to revenue for a guaranteed minimum number of flight hours per month even if the Aircraft did not fly those hours. According to Plaintiff, the parties made the following oral agreement in connection with the SFA contract: first, Plaintiff and Defendant agreed that Plaintiff would subordinate its access priority to the Aircraft for the duration of the SFA contract; second, they agreed that SFA would receive a discounted charter rate of $4,900 per hour, as opposed to the Lease's stated rate of $5,100.

For several years Defendant chartered airplanes for SFA and was paid for the actual flight time, but not for the difference between the actual time and the minimum monthly amount. During this time, Defendant paid Plaintiff 85% of the revenue for the hours SFA chartered the Aircraft; however, the invoices reflecting these payments did not mention the unused flight hours.

Defendant subsequently sent SFA an invoice in the fall of 2006 for unused flight time for which SFA had guaranteed payment as part of its 50-hour monthly minimum. Defendant gave SFA a discount of some 305 hours to account for flights that the Aircraft was chartered to third parties and accordingly not available for SFA's use. When SFA failed to pay Defendant's 2006 invoice, Defendant sued SFA in Supreme Court, Columbia County, to recover the value of the unused flight hours. After prevailing in a bench trial, then-Plaintiff Richmor obtained a judgment that was adjusted to $874,650; the parties subsequently settled for $775,000. *See Richmor Aviation, Inc. v. Sportsflight Air, Inc.*, 82 A.D.3d 1423, 1426-27 (3d Dep't 2011).

After Defendant settled the state-court litigation with SFA, Plaintiff demanded that Defendant pay it the entire settlement because the settlement represented less than 85% of the total value of the unused flight time. Mr. Richards, Defendant's President, testified that he considered gifting a portion of the state-court settlement to Plaintiff; however Plaintiff never received any proceeds from the state-court settlement.

Plaintiff then commenced this action seeking, among other things, payment of at least "$2,047,514, together with contract interest, costs[,] and attorneys' fees." *See* Dkt. No. 1, Complaint, at ¶¶ 66-75. According to Plaintiff, this amount represented the total value of unused flight time accrued under the SFA contract. After the Court's partial grant of Defendant's motion to dismiss, *see* Dkt. No. 24, Plaintiff's single remaining cause of action was for breach of contract.

The parties then cross-moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. *See* Dkt. Nos. 55, 58. The Court denied both parties' motions after finding that there were genuine factual disputes as to whether the parties orally modified the original lease and whether the account stated defense applied.

Thereafter, a jury trial commenced, at the end of which, the jury found as follows: (1) the parties orally modified their contract to provide that Defendant remit 85% of the SFA contract's proceeds, including all money related to unused flight hours, to Plaintiff; and (2) Defendant's account stated defense applied. As a result of the jury's findings, the Court entered judgment in Defendant's favor. Plaintiff then timely filed the pending motion for judgment as a matter of law or, in the alternative, for a new trial.

III. DISCUSSION

A. Motion for a new trial

1. Standard of review

A court may grant a new 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)(1)(A). The grounds that may justify a new trial include, among others, a verdict that is against the weight of the evidence, *see Raedle v. Credit Agricole Indosuez*, 670 F.3d 411, 417 (2d Cir. 2012), and non-harmless errors in jury instructions, *see United States v. Kozeny*, 667 F.3d 122, 130 (2d Cir. 2011), or verdict sheets, *see Armstrong ex rel. Armstrong v. Brookdale Univ. Hosp. & Med. Ctr.*, 425 F.3d 126, 136 (2d Cir. 2005).

"'[A] decision is against the weight of the evidence . . . if and only if the verdict is [(1)] seriously erroneous or [(2)] a miscarriage of justice.'" *Raedle*, 670 F.3d at 417-18 (quoting *Farrior*, 277 F.3d at 635) (other citation omitted). Furthermore, "a motion for a new trial may be granted even if there is substantial evidence to support the jury's verdict." *United States v. Landau*, 155 F.3d 93, 104 (2d Cir. 1998) (citations omitted). "Also . . . a trial judge considering a motion for a new trial 'is free to weigh the evidence himself and need not view it in the light most favorable to the verdict winner.'" *Id*. (quoting *Bevevino*, 574 F.2d at 684).

2. Account stated jury instruction

Plaintiff's motion for a new trial focuses on Defendant's account stated defense and whether and how it applies to this case. In short, Plaintiff argues that the jury's verdict is inherently contradictory, thus seriously erroneous, because it found that the parties modified their contract while at the same time finding that the account stated defense applied. As a first step in

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.