

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18363
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_____AD3d_____

Argued - January 28, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2007-00051

DECISION & ORDER

Gina Scibelli, plaintiff-respondent, v
Eugene G. Herman, D.M.D., P.C., defendant-
respondent, Total Dental Care of Suffolk, P.C.,
appellant.

(Index No. 31454/02)

Neil DeTolla (Mauro Goldberg & Lilling LLP, Great Neck, N.Y. [Caryn L. Lilling and Katherine Herr Solomon] of counsel), for appellant.

McAloon & Friedman, P.C., New York, N.Y. (Kenneth Fox of counsel), for defendant-respondent.

Meyer Suozzi, English & Klein, P.C., Garden City, N.Y. (Robert N. Zausmer and Ted J. Tanenbaum of counsel), for plaintiff-respondent.

In an action to recover damages for dental malpractice, the defendant Total Dental Care of Suffolk, P.C., appeals from a judgment of the Supreme Court, Suffolk County (Weber, J.), entered December 7, 2006, which, inter alia, upon a jury verdict finding it 57% at fault for the plaintiff's injuries and finding the nonparty Stony Brook Hospital 43% at fault, and upon an order of the same court dated October 31, 2006, denying its motion pursuant to CPLR 4404(a) to set aside the jury verdict, inter alia, as legally insufficient and against the weight of the evidence, and for a new trial, is in favor of the plaintiff and against it in the principal sums of \$300 for medical and dental expenses, \$100,000 for past pain and suffering, \$100,000 for future pain and suffering, and \$25,000 for future medical expenses.

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ORDERED that the judgment is affirmed, with one bill of costs.

The Supreme Court correctly denied the motion of the defendant Total Dental Care of Suffolk, P.C. (hereinafter Total Dental), pursuant to CPLR 4404(a) to set aside the jury verdict. The court's marshaling of evidence in its charge to the jury was balanced (*see People v Barren*, 240 AD2d 586; *see also Shainwald v Barasch*, 29 AD3d 337). The court properly exercised its discretion in limiting the jury's reconsideration of its inconsistent verdict to the question of apportionment of fault between Total Dental and the nonparty Stony Brook Hospital (*see Soto v Famulari*, 28 AD3d 639; *Mateo v 83 Post Ave. Assoc.*, 12 AD3d 205, 206). The evidence at trial provided a valid line of reasoning and permissible inferences to support the jury's conclusions. Accordingly, the verdict in favor of the plaintiff and against Total Dental was supported by legally sufficient evidence (*see Cohen v Hallmark Cards*, 45 NY2d 493, 499; *Courtney v Port Auth. of N.Y. and N.J.*, 45 AD3d 801). Moreover, upon review of the trial record, we find that the verdict was based upon a fair interpretation of the evidence presented to the jury, and thus it was not against the weight of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744; *Nicastro v Park*, 113 AD2d 129).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court