

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

D20023  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 6, 2008

STEVEN W. FISHER, J.P.  
DAVID S. RITTER  
ANITA R. FLORIO  
EDWARD D. CARNI, JJ.

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2007-02814

DECISION & ORDER

Serafina Siciliano, respondent, v Middletown Park  
Manor Health Facility, LLC, et al., appellants.

(Index No. 3954/03)

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Tarshis, Catania, Liberth, Mahon & Milligram, PLLC, White Plains, N.Y.  
(Meiselman, Denlea, Packman, Carton & Eberz, P.C. [Myra I. Packman] of counsel),  
for appellants.

Hach & Ross, LLP (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J.  
Isaac and Michael H. Zhu] of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from a judgment of the Supreme Court, Orange County (Peter C. Patsalos, J.), entered January 23, 2007, which, upon a jury verdict on the issue of liability finding the defendants 100% at fault in the happening of the accident and a jury verdict on the issue of damages, and upon the denial of their motion pursuant to CPLR 4401, made at the close of the plaintiff's case, for judgment as a matter of law for failure to make out a prima facie case and the denial of their motion pursuant to CPLR 4404 to set aside the verdict and for a new trial, is in favor of the plaintiff and against them.

ORDERED that the judgment is reversed, on the facts, the motion pursuant to CPLR 4404 to set aside the verdict and for a new trial is granted, and a new trial is granted, with costs to abide the event.

The verdict could not have been reached on any fair interpretation of the evidence, and cannot be reconciled with a reasonable view of the evidence (*see Zito v City of New York*, 49 AD3d 872; *Martin v New York City Tr. Auth.*, 48 AD3d 522). Accordingly, the liability verdict was against

August 19, 2008

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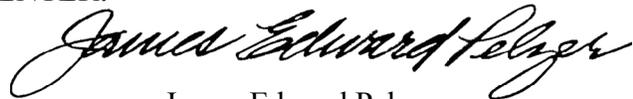
SICILIANO v MIDDLETOWN PARK MANOR HEALTH FACILITY, LLC

the weight of the evidence.

The defendants' remaining contentions either are without merit or, in light of our determination, need not be reached.

FISHER, J.P., RITTER, FLORIO and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court