

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

D20168
Y/prt

_____AD3d_____

Submitted - June 9, 2008

FRED T. SANTUCCI, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-10484

DECISION & ORDER

Salvatore Dellaventura, et al., appellants,
v City of New York, defendant,
Pablito Mejia, et al, respondents.

(Index No. 101559/04)

Jonathan D'Agostino, Staten Island, N.Y. (Edward J. Pavia, Jr., of counsel), for appellants.

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum] of counsel), for respondents.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Susan Paulson of counsel), for defendant City of New York (no brief filed).

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Richmond County (Aliotta, J.), dated October 29, 2007, as, upon a jury verdict, is in favor of the defendants Pablito Mejia and Venus Mejia and against them, dismissing the complaint insofar as asserted against those defendants.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

The plaintiff contends that the jury verdict was against the weight of the evidence. “A verdict should not be set aside as against the weight of the evidence unless the evidence so preponderates in favor of the moving party that it could not have been reached upon any fair interpretation of the evidence” (*Evers v Carrol*, 17 AD3d 629, 631, quoting *Schiskie v Fernan*, 277 AD2d 441; see *Kalpakis v County of Nassau*, 289 AD2d 453; *Nicastro v Park*, 113 AD2d 129). In

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this case, the jury's conclusion finding in favor of the defendants Pablito Mejia and Venus Mejia was supported by a fair interpretation of the evidence adduced at trial.

SANTUCCI, J.P., ANGIOLILLO, ENG and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court