

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

D21084
Y/kmg

_____AD3d_____

Argued - October 7, 2008

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
EDWARD D. CARNI, JJ.

2007-06490

DECISION & ORDER

Samonie Beaumont, appellant,
v City of New York, et al., respondents.

(Index No. 38560/04)

Roger V. Archibald, Brooklyn, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F.X. Hart and
Marta Ross of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Bunyan, J.), dated July 5, 2007, as denied her oral application pursuant to CPLR 4404 to set aside so much of a jury verdict as found that the defendant George E. Batts was not negligent as against the weight of the evidence.

ORDERED that on the Court's own motion, the plaintiff's notice of appeal is treated as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

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

A jury verdict should not be set aside as against the weight of the evidence unless the jury could not have reached the verdict by any fair interpretation of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744; *Ahr v Karolewski*, 48 AD3d 719; *Nicastro v Park*, 113 AD2d 129). The jury's determination as to issues of credibility "is entitled to great deference given its opportunity

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to hear and observe the witnesses” (*Ahr v Karolewski*, 48 AD3d 719; see *Bertelle v New York City Tr. Auth.*, 19 AD3d 343). Here, the evidence at trial did not “so preponderate[] in favor of the plaintiff that the jury could not have reached its verdict [finding the defendant George E. Batts not negligent in the happening of the accident] on any fair interpretation of the evidence” (*Ahr v Karolewski*, 48 AD3d at 719-720).

SPOLZINO, J.P., RITTER, SANTUCCI and CARNI, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court