

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

D21517
O/prt

_____AD3d_____

Argued - November 24, 2008

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2008-02644

DECISION & ORDER

Samuel Amachee, respondent, v John Ram
Mohammed, et al., defendants, New York City
Transit Authority, appellant.

(Index No. 35736/99)

Wallace D. Gossett, Brooklyn, N.Y. (Lawrence Heisler of counsel), for appellant.

Thomas Ram, New York, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant New York City Transit Authority appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Steinhardt, J.), dated January 31, 2008, as denied that branch of its motion pursuant to CPLR 4404(a) which was to set aside a jury verdict in favor of the plaintiff and against it on the issue of liability and for judgment as a matter of law.

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

When a party moves pursuant to CPLR 4404(a) to set aside a verdict as unsupported by legally sufficient evidence and for judgment as a matter of law, the court must determine “whether ‘there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [people] to the conclusion reached by the jury on the basis of the evidence presented at trial’” (*Mirand v City of New York*, 84 NY2d 44, 48-49, quoting *Cohen v Hallmark Cards*, 45 NY2d 493, 499; see *Raugalas v Chase Manhattan Corp.*, 305 AD2d 654, 655). Here, there was adequate evidence in the trial record to support either of two competing versions of the accident - one in which a truck negligently backed into a bus owned and operated by the defendant New York City Transit Authority (hereinafter NYCTA), and the other in which the bus negligently struck the rear of the

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truck while attempting to maneuver around it. Accordingly, viewing the evidence in the light most favorable to the plaintiff (*see Alexander v Eldred*, 63 NY2d 460, 464; *Lauria v City of New York*, 52 AD3d 577, 578; *Campos v Ofman*, 49 AD3d 485, 486), it simply cannot be said that the verdict against NYCTA was “utterly irrational” (*Cohen v Hallmark Cards*, 45 NY2d 493, 499) so as to warrant setting it aside and entering judgment in favor of NYCTA.

RIVERA, J.P., ANGIOLILLO, ENG and BELEN, 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