

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

D25331
H/prt

_____AD3d_____

Argued - October 16, 2009

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2008-04798

DECISION & ORDER

Gerard DeToia, appellant, v Yellow Transportation,
Inc., et al., respondents.

(Index No. 14311/05)

Wolin & Wolin, Jericho, N.Y. (Alan E. Wolin of counsel), for appellant.

Fulbright & Jaworski L.L.P., New York, N.Y. (Douglas P. Catalano and Neil G. Sparber of counsel), for respondents.

In an action, inter alia, to recover damages for discrimination in employment on the basis of race and national origin and the creation of a hostile work environment in violation of Executive Law § 296, the plaintiff appeals from a judgment of the Supreme Court, Nassau County (Woodard, J.), dated March 28, 2008, which, upon a jury verdict, and upon the denial of his oral application pursuant to CPLR 4404(a) to set aside the verdict as contrary to the weight of the evidence, is in favor of the defendants and against him dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

The Supreme Court properly denied the plaintiff's oral application pursuant to CPLR 4404(a) to set aside the verdict as contrary to the weight of the evidence. Whether a jury verdict should be set aside as contrary to the weight of the evidence does not involve a question of law, but rather, requires a discretionary balancing of many factors (*see Cohen v Hallmark Cards*, 45 NY2d 493, 498-499). It is for the trier of fact to make determinations as to the credibility of the witnesses, and great deference is accorded to the factfinders, who had the opportunity to see and hear the witnesses (*see Bertelle v New York City Tr. Auth.*, 19 AD3d 343). Under the circumstances here, the

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jury verdict is supported by a fair interpretation of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744, 746; *Nicastro v Park*, 113 AD2d 129, 132-137).

The plaintiff's remaining contentions are without merit.

COVELLO, J.P., SANTUCCI, CHAMBERS and LOTT, 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