

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

D25499  
W/hu

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Argued - November 30, 2009

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
RANDALL T. ENG  
SANDRA L. SGROI, JJ.

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2008-10411

DECISION & ORDER

Cynthia Dunnaville, et al., appellants, v Metropolitan  
Transit Authority of City of New York, et al.,  
respondents.

(Index No. 28435/04)

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James L. Franklin, New York, N.Y., for appellants.

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

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from a judgment of the Supreme Court, Queens County (Rosengarten, J.), entered November 6, 2008, which, upon a jury verdict, and upon the denial of their motion pursuant to CPLR 4404(a) to set aside the verdict as contrary to the weight of the evidence and, in effect, for a new trial, is in favor of the defendants and against them dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

A jury verdict should not be set aside as contrary to 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; *Nicastro v Park*, 113 AD2d 129). Here, the jury's determination was supported by a fair interpretation of the evidence (*see Solazzo v New York City Tr. Auth.*, 6 NY3d 734; *Skouras v New York City Tr. Auth.*, 48 AD3d 547; *DeStefano v City of New York*, 41 AD3d 528; *Dowden v Long Is. R.R.*, 305 AD2d 631).

December 22, 2009

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AUTHORITY OF CITY OF NEW YORK

The plaintiffs' remaining contentions are unpreserved for appellate review.

SKELOS, J.P., DICKERSON, ENG and SGROI, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court