

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

D32940  
H/mv

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 28, 2011

WILLIAM F. MASTRO, J.P.  
CHERYL E. CHAMBERS  
SANDRA L. SGROI  
ROBERT J. MILLER, JJ.

2010-07506  
2010-10774

DECISION & ORDER

Michael Stern, et al., appellants, v Jeffrey Goldstein,  
respondent, et al., defendant.

(Index No. 12699/08)

Reisman Rubeo & McClure, LLP, Hawthorne, N.Y. (Mark A. Rubeo, Jr., Mark I. Reisman, and Christopher W. McClure of counsel), for appellants.

Wilson, Bave, Conboy, Cozza & Couzens, P.C., White Plains, N.Y. (Robert J. Gironda of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from (1) a judgment of the Supreme Court, Westchester County (Liebowitz, J.), entered June 16, 2010, which, upon the denial of their motion and renewed motion pursuant to CPLR 4401, made at the close of their case and at the close of the evidence on the issue of liability, respectively, for judgment as a matter of law on the issue of liability, and upon a jury verdict on the issue of liability finding that the defendant was not negligent in the happening of the subject accident, is in favor of the defendant and against them dismissing the complaint, and (2) an order of the same court entered September 23, 2010, which denied their motion pursuant to CPLR 4404(a), in effect, to set aside the judgment and for judgment as a matter of law on the issue of liability or, in the alternative, in effect, to set aside the judgment and for a new trial on the issue of liability on the ground that the verdict was contrary to the weight of the evidence or the product of substantial juror confusion.

ORDERED that the judgment and the order are affirmed, with one bill of costs.

November 15, 2011

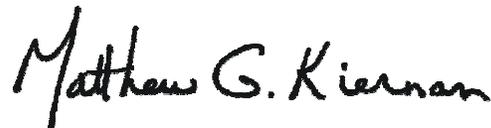
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Contrary to the plaintiffs' contention, the Supreme Court properly denied their motion pursuant to CPLR 4401, made at the close of their case on the issue of liability, for judgment as a matter of law on that issue (*see Gracie Sq. Realty Corp. v Choice Realty Corp.*, 305 NY 271, 278; *Martin Fireproofing Corp. v Maryland Cas. Co.*, 45 Misc 2d 354, 359, *affd* 26 AD2d 910), as well as their renewed motion pursuant to CPLR 4401, made at the close of the evidence on the issue of liability, for judgment as a matter of law on that issue (*see generally Szczerbiak v Pilat*, 90 NY2d 553, 556; *Tapia v Dattco, Inc.*, 32 AD3d 842, 844). Also contrary to the plaintiffs' contention, the Supreme Court properly denied those branches of their motion pursuant to CPLR 4404(a) which were, in effect, to set aside the judgment and for judgment as a matter of law on the issue of liability (*see generally Cohen v Hallmark Cards*, 45 NY2d 493, 499; *Tapia v Dattco, Inc.*, 32 AD3d at 844; *Broadie v St. Francis Hosp.*, 25 AD3d 745, 746), or for a new trial on the issue of liability on the ground that the verdict was contrary to the weight of the evidence (*see Corcoran v People's Ambulette Serv.*, 237 AD2d 402, 403; *Gianniosis v LID Mgt. & Finishing Serv. Co.*, 194 AD2d 413, 413; *Borgo v Sontag*, 98 AD2d 786, 788; *cf. Mohamed v Frische*, 223 AD2d 628, 628; *Avila v Mellen*, 131 AD2d 408, 409; *see generally Lolik v Big V Supermarkets*, 86 NY2d 744, 746; *Tapia v Dattco, Inc.*, 32 AD3d at 845; *Nicastro v Park*, 113 AD2d 129, 133). Finally, contrary to the plaintiffs' contention, the Supreme Court properly denied that branch of their motion pursuant to CPLR 4404(a) which was, in effect, to set aside the judgment and for a new trial on the issue of liability on the ground that the verdict was the product of substantial juror confusion (*see Mattei v Figueroa*, 262 AD2d 459, 460; *cf. Roberts v County of Westchester*, 278 AD2d 216, 217; *Clarke v Order of Sisters of St. Dominic*, 273 AD2d 431, 432-433; *DePasquale v Morbark Indus.*, 254 AD2d 450, 450; *Trotter v Johnson*, 210 AD2d 946, 947).

MASTRO, J.P., CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:



Matthew G. Kiernan  
Clerk of the Court