

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

D33086
C/kmb

_____AD3d_____

Argued - November 10, 2011

WILLIAM F. MASTRO, A.P.J.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-02718

DECISION & ORDER

Young Hee Lee, respondent, v Inspa World, et al.,
appellants.

(Index No. 7470/08)

Steven F. Goldstein, LLP, Carle Place, N.Y., for appellants.

Sim & Park, LLP, New York, N.Y. (Sang J. Sim of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from a judgment of the Supreme Court, Queens County (Rosengarten, J.), entered February 15, 2011, which, upon a jury verdict finding the defendant Inspa World 100% at fault in the happening of the accident, is in favor of the plaintiff and against the defendant Inspa World in the principal sum of \$70,000.

ORDERED that the appeal by the defendant Chon Property Corp., is dismissed, as it is not aggrieved by the judgment (*see* CPLR 5511); and it is further,

ORDERED that the judgment is affirmed on the appeal of the defendant Inspa World; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

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; *Cohen v Hallmark Cards*, 45 NY2d 493; *Nicastro v Park*, 113 AD2d 129). Whether a jury verdict should be set aside as contrary to the weight of the evidence does not

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involve a question of law, but rather requires a discretionary balancing of many factors (*see Cohen v Hallmark Cards*, 45 NY2d 493; *Nicastro v Park*, 113 AD2d 129). The jury's determinations as to the credibility of the witnesses are given deference, given its opportunity to see and hear the witnesses (*see Ahr v Karolewski*, 48 AD3d 719; *Bertelle v New York City Tr. Auth.*, 19 AD3d 343). Applying these principles to the facts of this case, the jury's determination that the defendant Inspa World was 100% at fault in the happening of the accident was supported by a fair interpretation of the evidence (*see Nicastro v Park*, 113 AD2d 129).

Inspa World's remaining contentions are without merit.

MASTRO, A.P.J., CHAMBERS, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court