

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

D33153
Y/prt

_____AD3d_____

Argued - November 10, 2011

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2010-06892
2010-08580

DECISION & ORDER

Joseph Clarke, et al., appellants, v
Thomas Condon, Jr., et al., respondents.

(Index No. 5712/06)

Finkelstein & Partners, LLP, Newburgh, N.Y. (Lawrence D. Lissauer of counsel), for
appellants.

James R. McCarl, Montgomery, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal (1) from a judgment of the Supreme Court, Dutchess County (Wood, J.), dated June 24, 2010, which, upon a jury verdict, is in favor of the defendants and against them dismissing the complaint, and (2) from an order of the same court dated August 11, 2010, which denied their applications pursuant to CPLR 4404(a) to set aside the jury verdict and for judgment as a matter of law or for a new trial.

ORDERED that on the Court's own motion, the plaintiffs' notice of appeal from the order is treated as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

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

This action arises from an automobile accident that occurred in March 2006. After a trial, the jury rendered a verdict in favor of the defendants.

December 6, 2011

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The Supreme Court did not err in denying the plaintiffs' applications pursuant to CPLR 4404(a) to set aside the jury verdict and for judgment as a matter of law or for a new trial. To grant a motion for judgment as a matter of law, the trial court must view the evidence in the light most favorable to the nonmovant and conclude that there is "no rational process by which the fact trier could base a finding in favor of the" nonmovant (*Szczerbiak v Pilat*, 90 NY2d 553, 556). Here, a rational interpretation of the evidence supported the jury verdict, which found that the defendant driver was not negligent (*see Rubino v Scherrer*, 68 AD3d 1090, 1091; *Bagnato v Romano*, 179 AD2d 713, 714), and that he exercised reasonable care in an effort to comply with the Vehicle and Traffic Law, thereby excusing his violation of the statute (*see Schager v Lino Bordi, Inc.*, 2 AD3d 828; *Espinal v Sureau*, 262 AD2d 523, 524).

Further, 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 Nicaastro v Park*, 113 AD2d 129, 134). Here, the verdict was not contrary to the weight of the evidence (*see Asaro v Micali*, 292 AD2d 552; *see also Rubino v Scherrer*, 68 AD3d at 1091-1092).

The plaintiffs' remaining contentions are either not properly before this Court or without merit.

DILLON, J.P., ANGIOLILLO, FLORIO and DICKERSON, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court