

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

D33231  
H/prt

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

Argued - November 21, 2011

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

2008-07761  
2009-02968

DECISION & ORDER

Scott H. See, Jr., etc., appellant, v Baltic Estates, Inc.,  
respondent (and a third-party action and another title).

(Index No. 5861/04)

Steven M. Melley, Rhinebeck, N.Y. (Kevin J. Rumsey of counsel), for appellant.

Thomas D. Hughes, New York, N.Y. (Richard C. Rubinstein of counsel), for  
respondent.

In an action to recover damages for personal injuries, which was consolidated with a related action, the plaintiff appeals, as limited by his brief, from (1) so much of an order of the Supreme Court, Dutchess County (Pagones, J.), dated July 22, 2008, as denied that branch of his motion which was pursuant to CPLR 4404(a) to set aside so much of a jury verdict as was in favor of the defendant and against him on the issue of liability as contrary to the weight of the evidence and for a new trial, and (2) so much of a judgment of the same court entered February 24, 2009, as, upon the order, is in favor of the defendant and against him dismissing the complaint.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed insofar as appealed from; and it is further,

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

The appeal from the order must be dismissed because the right of direct appeal

December 13, 2011

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therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review on the appeal from the judgment (*see CPLR 5501[a][1]*).

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). 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; *Nicastro v Park*, 113 AD2d 129). Here, the jury was presented with conflicting factual accounts of the manner in which the subject accident occurred, and its determination was supported by a fair interpretation of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744; *Nicastro v Park*, 113 AD2d 129).

Accordingly, the Supreme Court properly denied that branch of the plaintiff's motion which was pursuant to CPLR 4404(a) to set aside so much of the verdict as was in favor of the defendant and against him on the issue of liability as contrary to the weight of the evidence and for a new trial.

ANGIOLILLO, J.P., DICKERSON, LOTT and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court