

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

D33428
H/prt

_____AD3d_____

Argued - December 9, 2011

THOMAS A. DICKERSON, J.P.
L. PRISCILLA HALL
JEFFREY A. COHEN
ROBERT J. MILLER, JJ.

2011-00729

DECISION & ORDER

Demetri Christoforatos, appellant, v City of New York,
et al., respondents, et al., defendant.

(Index No. 3236/07)

Lisa M. Comeau, Garden City, N.Y. (Ronemus & Vilensky LLP [Michael B. Ronemus], of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath, Margaret G. King, and Ellen Ravitch of counsel), for respondents City of New York and New York City Department of Parks and Recreation.

Martyn, Toher & Martyn, Mineola, N.Y. (Thomas M. Martyn of counsel), for respondent A Royal Flush, Inc.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Queens County (Kerrigan, J.), entered September 9, 2010, which, upon, inter alia, the granting of the motion of the defendant A Royal Flush, Inc., pursuant to CPLR 4401 for judgment as a matter of law made at the close of the evidence, upon a jury verdict in favor of the defendants City of New York and New York City Department of Parks and Recreation on the issue of liability, and upon the denial of the plaintiff's motion pursuant to CPLR 4404(a) to set aside the verdict as contrary to the weight of the evidence and for a new trial, is in favor of the defendants City of New York, New York City Department of Parks and Recreation, and A Royal Flush, Inc., and against him dismissing the complaint insofar as asserted against those defendants.

ORDERED that the judgment is affirmed, with one bill of costs to the respondents appearing separately and filing separate briefs.

December 27, 2011

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CHRISTOFORATOS v CITY OF NEW YORK

The plaintiff was entering a portable restroom belonging to the defendant A Royal Flush, Inc., which had been installed on an area of grass in a park maintained by the defendant City of New York and the New York City Department of Parks and Recreation, when he slipped and fell. The plaintiff asserted that the slippery condition of an area bare of grass in front of the restroom door caused him to fall.

At trial, the plaintiff sought to offer the testimony of an expert on the issue of the placement of the portable restroom in a location where access required walking on grass rather than a paved surface, but was precluded from offering the expert's testimony.

Expert testimony has been found necessary when it helps to clarify an issue which calls for professional or technical knowledge, possessed by an expert and beyond the understanding of the typical juror (*see De Long v County of Erie*, 60 NY2d 296, 307; *Jean-Louis v City of New York*, 86 AD3d 628; *Mariano v Schuylerville Cent. School Dist.*, 309 AD2d 1116). The admissibility and scope of expert testimony is a determination within the discretion of the trial court (*see De Long v County of Erie*, 60 NY2d 296; *Leonick v City of New York*, 120 AD2d 573).

Contrary to the plaintiff's contention, the placement of the portable restroom so that access required walking on grass, where pedestrian traffic could result in bare areas which became wet and muddy after rain, was not beyond the understanding of the typical juror (*see De Long v County of Erie*, 60 NY2d at 307; *Franco v Muro*, 224 AD2d 579; *cf. Jean-Louis v City of New York*, 86 AD3d 628). The plaintiff's contention that his expert should have been permitted to testify as to alleged violations of city and industry safety regulations is without merit, as the plaintiff failed to offer proof that any safety code or regulation applied (*see Zebzda v Hudson St., LLC.*, 72 AD3d 679; *Ercegovic v P&T Mgt. Co., LLC*, 44 AD3d 995). Consequently, the Supreme Court properly precluded the plaintiff's expert from testifying (*see De Long v County of Erie*, 60 NY2d at 307; *Mariano v Schuylerville Cent. School Dist.*, 309 AD2d 1116; *Franco v Muro*, 224 AD2d 579; *Leonick v City of New York*, 120 AD2d 573).

A jury verdict should not be set aside as contrary to the weight of the evidence unless the jury could not have reached its verdict by any fair interpretation of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744; *Jean-Louis v City of New York*, 86 AD3d 628; *Dunnville v Metropolitan Tr. Auth. of City of N.Y.*, 68 AD3d 1047). Based on the evidence submitted to the jury, its determination that the defendants City of New York and New York City Department of Parks and Recreation were not negligent was not contrary to the weight of the evidence (*see Solazzo v New York City Tr. Auth.*, 6 NY3d 734, 735; *Piacquadio v Recine Realty Corp.*, 84 NY2d 967; *Dunnville v Metropolitan Tr. Auth. of City of N.Y.*, 68 AD3d 1047).

DICKERSON, J.P., HALL, COHEN and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court