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

D33555
Y/ct

_____AD3d_____ Argued - December 9, 2011

THOMAS A. DICKERSON, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-10829 DECISION & ORDER

Maria Bonny, plaintiff-appellant, v Jean Herick Pierre, et al., defendants-appellants, Lloyd O. Nwankwo, defendant-respondent, et al., defendant.

(Index No. 11989/06)

Marius C. Wesser, P.C., Brooklyn, N.Y., for plaintiff-appellant.

Maroney O'Connor, LLP, New York, N.Y. (Gerald G. Cowen of counsel), for defendants-appellants.

Cartafalsa, Slattery, Turpin & Lenoff, New York, N.Y. (Raymond F. Slattery of counsel), for defendant-respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of a judgment of the Supreme Court, Kings County (Bayne, J.), entered October 21, 2010, as, upon a jury verdict, and upon the denial of her motion pursuant to CPLR 4404(a) to set aside so much of the verdict as found that the defendant Lloyd O. Nwankwo was not negligent as contrary to the weight of the evidence, in effect, dismissed the complaint insofar as asserted against Nwankwo, and the defendants Jean Herick Pierre and Future Cab Corp. separately appeal, as limited by their brief, from so much of the same judgment as, in effect, upon the jury verdict, and upon the denial of their motion pursuant to CPLR 4404(a) to set aside so much of the verdict as found that the defendant Lloyd O. Nwankwo was not negligent as against the weight of the evidence, in effect, dismissed their cross claim asserted against the defendant Lloyd O. Nwankwo.

ORDERED that the judgment is affirmed insofar as appealed from, with one bill of costs payable by the appellants appearing separately and filing separate briefs.

CPLR 4404(a) states, inter alia, that a court may set aside a jury verdict and "order a new trial . . . where the verdict is contrary to the weight of the evidence." "A jury verdict should not be set aside as contrary to the weight of the evidence unless the 'evidence so preponderate[s] in favor of the [moving party] that the jury could not have reached the verdict by any fair interpretation of the evidence'" (*Seong Yim Kim v New York City Tr. Auth.*, 87 AD3d 531, 532, quoting *Acosta v City of New York*, 84 AD3d 706, 708). "It is within the province of the jury to determine issues of credibility, and great deference is accorded to the jury given its opportunity to see and hear the witnesses" (*Palermo v Original California Taqueria, Inc*., 72 AD3d 917, 918).

Contrary to the contentions of the plaintiff and the defendants Jean Herick Pierre and Future Cab Corp., there was a fair interpretation of the evidence supporting the jury's determination that the defendant Lloyd O. Nwankwo was not negligent and did not violate Vehicle and Traffic Law § 1214, in that he opened the door of his vehicle after determining that it was reasonably safe to do so (*see* Vehicle and Traffic Law § 1214; *cf. Abbas v Salavel*, 73 AD3d 1100; *Montesinos v Cote*, 46 AD3d 774; *Williams v Persaud*, 19 AD3d 686). Accordingly, the Supreme Court properly denied the respective motions of the plaintiff and the defendants Jean Herick Pierre and Future Cab Corp., pursuant to CPLR 4404(a) to set aside so much of the jury verdict as found that Nwankwo was not negligent as against the weight of the evidence.

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

ENTER:

Aprilanne Agostino
Clerk of the Court