

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

D34748
H/kmb

_____AD3d_____

Argued - March 23, 2012

WILLIAM F. MASTRO, A.P.J.
RUTH C. BALKIN
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2011-02563

DECISION & ORDER

Nicholas DeSalvo, appellant, v Joseph Kreynin,
respondent.

(Index No. 34514/08)

Bernadette Panzella, P.C., New York, N.Y. (Robert A. Mulhall of counsel), for
appellant.

Nicolini, Paradise, Ferretti & Sabella, Mineola, N.Y. (John Ferretti of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from a
judgment of the Supreme Court, Kings County (Vaughan, J.), entered February 2, 2011, which, upon
a jury verdict, is in favor of the defendant and against him on the issue of liability, dismissing the
complaint.

ORDERED that the judgment is affirmed, with costs.

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). “A jury’s finding that a party was at fault but that such fault was not a proximate cause of the
accident is inconsistent and against the weight of the evidence only when the issues are so
inextricably interwoven as to make it logically impossible to find negligence without also finding
proximate cause” (*Stewart v Marte*, 91 AD3d 754, 755, quoting *Garrett v Manaser*, 8 AD3d 616,
617; *see Schaefer v Guddemi*, 182 AD2d 808, 809; *Rubin v Pecoraro*, 141 AD2d 525, 527).

Under the circumstances presented here, the jury’s determination that the defendant

was negligent, but that his negligent operation of his vehicle was not a proximate cause the subject accident, was not contrary to the weight of the evidence.

MASTRO, A.P.J., BALKIN, SGROI and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court