

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

D35661
T/kmb

_____AD3d_____

Argued - May 25, 2012

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2012-00009

DECISION & ORDER

Cecilia Aikens-Hobson, et al., appellants, v
Joseph Bruno, et al., defendants, AC-Delco
Cars, Inc., et al., respondents.

(Index No. 27370/07)

Marulli, Lindenbaum, Edelman & Tomaszewski, LLP, New York, N.Y. (Gerard J. Marulli of counsel), for appellants.

Novins O'Leary (Jason Tenenbaum, Garden City, N.Y., of counsel), for respondents AC-Delco Cars, Inc., and Kevin Sirota.

James G. Bilello (Montfort, Healy, McGuire & Salley, Garden City, N.Y. [Donald S. Neumann, Jr., and Michael Adams], of counsel), for respondent Aamir N. Shakir.

Connors & Connors, P.C., Staten Island, N.Y. (Leonard A. Robusto and Kenneth J. Dale of counsel), for respondent Brian Bollo.

In an action to recover damages for personal injuries, the plaintiffs appeal from a judgment of the Supreme Court, Kings County (Bayne, J.), dated November 17, 2011, which, upon the granting of the motion of the defendant Aamir N. Shakir and the separate motion of the defendant Brian Bollo pursuant to CPLR 4401 for judgment as a matter of law, made at the close of evidence, and upon a jury verdict on the issue of liability in favor of the defendants AC-Delco Cars, Inc., and Kevin Sirota, is in favor of the defendants AC-Delco Cars, Inc., Kevin Sirota, Aamir N. Shakir, and Brian Bollo, and against them dismissing the complaint insofar as asserted against those defendants.

ORDERED that the judgment is modified, on the facts, by deleting the provision thereof dismissing the complaint insofar as asserted against the defendants AC-Delco Cars, Inc., and

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Kevin Sirota; as so modified, the judgment is affirmed, with one bill of costs to the plaintiffs, payable by the defendants AC-Delco Cars, Inc., and Kevin Sirota, and one bill of costs to the defendants Aamir N. Shakir and Brian Bollo, payable by the plaintiffs, the complaint is reinstated insofar as asserted against the defendants AC-Delco Cars, Inc., and Kevin Sirota, and the matter is remitted to the Supreme Court, Kings County, for a new trial as to the defendants AC-Delco Cars, Inc., and Kevin Sirota.

To succeed on a motion for judgment as a matter of law pursuant to CPLR 4401, a defendant has the burden of showing that there is no rational process by which the jury could find in favor of the plaintiff and against the moving defendant (*see Szczerbiak v Pilat*, 90 NY2d 553, 556; *Liounis v New York City Tr. Auth.*, 92 AD3d 643; *Velez v Goldenberg*, 29 AD3d 780, 781). In determining whether the defendant has met this burden, a court must consider the facts in the light most favorable to the plaintiff and accord the plaintiff the benefit of every favorable inference which can reasonably be drawn from the evidence presented at trial (*see Szczerbiak v Pilat*, 90 NY2d at 556; *Liounis v New York City Tr. Auth.*, 92 AD3d 643; *Velez v Goldenberg*, 29 AD3d at 781).

The trial court properly granted the separate motions of the defendant Aamir N. Shakir and the defendant Brian Bollo pursuant to CPLR 4401 since there was no rational process by which the jury could find either one of them liable. The evidence demonstrated that both Shakir and Bollo operated their vehicles in a nonnegligent manner, and no evidence was presented to show that they contributed to the happening of the injury-producing event (*see generally Daramboukas v Samlidis*, 84 AD3d 719; *Franco v Breceus*, 70 AD3d 767; *Shirman v Lawal*, 69 AD3d 838; *Smith v Seskin*, 49 AD3d 628; *Katz v Masada II Car & Limo Serv., Inc.*, 43 AD3d 876).

However, the jury's finding that the defendant Kevin Sirota, the operator of a vehicle owned by his employer, the defendant AC-Delco Cars, Inc., was negligent, but that his negligence was not a proximate cause of the accident, was contrary to the weight of the evidence. Under the circumstances, the issues of negligence and proximate cause were so inextricably interwoven that it would be logically impossible for the jury to find that Sirota was negligent without also finding that his negligence was a proximate cause of the accident (*see Stewart v Marte*, 91 AD3d 754, 754-755; *McConnell v Santana*, 77 AD3d 635, 636-637). Accordingly, a new trial is necessary with respect to the defendants AC-Delco Cars, Inc., and Kevin Sirota.

The plaintiffs' remaining contentions are not preserved for appellate review, are without merit, or need not be considered in view of the foregoing analysis.

MASTRO, A.P.J., ANGIOLILLO, AUSTIN and SGROI, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court