

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

D36244
W/hu

_____AD3d_____

Argued - September 6, 2012

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-10372

DECISION & ORDER

Litten T. Thomas, appellant, v Michael Cefola, respondent.

(Index No. 3201/04)

Ganesh Nadi Viswanathan, Spring Valley, N.Y., for appellant.

Wilson, Bave, Conboy, Cozza & Couzens, White Plains, N.Y. (Robert J. Gironda of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of Supreme Court, Rockland County (Jamieson, J.), entered September 9, 2010, which, upon a jury verdict, is in favor of the defendant and against him dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

Viewing the evidence in the light most favorable to the defendant, there was a valid line of reasoning and permissible inferences which could lead rational people to the conclusion reached by the jury on the basis of the evidence presented (*see Bergamo v Verizon N.Y., Inc.*, 95 AD3d 916, 917; *Hammond v Diaz*, 82 AD3d 839, 840; *Segal v City of New York*, 66 AD3d 865, 866-867). Furthermore, the verdict was based upon a fair interpretation of the evidence and, thus, was not contrary the weight of the evidence (*see Bergamo v Verizon N.Y., Inc.*, 95 AD3d at 917; *Hammond v Diaz*, 82 AD3d at 840; *Segal v City of New York*, 66 AD3d at 867).

The plaintiff failed to establish that he was entitled to damages for noneconomic loss as a result of the subject motor vehicle accident, since he failed to prove that he sustained a serious injury as defined by Insurance Law § 5102(d) (*see Insurance Law § 5104[a]*). While the plaintiff is correct that he was not required to prove that he sustained a serious injury as defined by Insurance

Law § 5102(d) in order to recover for economic loss exceeding \$50,000 that he incurred as a result of the subject motor vehicle accident (*see* Insurance Law § 5104[a]), he nonetheless failed to prove that he sustained economic loss exceeding \$50,000 as a result of the subject accident.

The plaintiff's remaining contentions are either unpreserved for appellate review or without merit.

The defendant's remaining contention is not properly before this Court.

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

ENTER:


Aprilanne Agostino
Clerk of the Court