Contreras v 831 Quincy St. LLC
2024 NY Slip Op 31407(U)
April 10, 2024
Supreme Court, Kings County
Docket Number: Index No. 504105/2018
Judge: Devin P. Cohen
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Supreme Court of the State of New York
County of Kings

Part LL1

JHON CONTRERAS,

Plaintiff,

against

831 QUINCY STREET LLC,

Defendant.

Index Number 504105/2018
Seqs. # 006

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers	Numbered
Notice of Motion and Affidavits Annexed	1–3
Order to Show Cause and Affidavits Annexed.	
Answering Affidavits	4
Replying Affidavits	5
Exhibits	Var.
Other	

Upon the foregoing papers,[1] defendant's motion to set aside the verdict (Seq. 006) is decided as follows:

Procedural History and Factual Background

Plaintiff commenced this action to recover for injuries he sustained when he was struck by falling sheetrock while employed as a construction worker. This court conducted a bifurcated trial of the action. The liability portion of the trial of plaintiff's claim was conducted on May 22, 23, 30, and June 5, 2023. On the last day of the liability phase, the jury was charged, deliberated, and returned a verdict in favor of plaintiff, finding defendant liable under both Labor Law §§ 240 (1) and 241 (6). The damages phase of the bifurcated trial proceeded the next day, and was

[1] Counsel filed three attorney affirmations in support of this motion from different attorneys at the same firm, all filed by the same NYSCEF user, alongside a memorandum of law. Although none of these documents individually exceeded the word limit of 22 NYRR 202.8-b, multiple affirmations filed by same firm which combined more than double the word limit clearly runs afoul of the spirit of the rule. Counsel also failed to meet the requirement of 22 NYRR 202.8-b (c). Finally, counsel's affirmation in reply is well in excess of the word limit proscribed by 22 NYRR 202.8-b. While the court will elect to accept the papers in this instance and resolve the motion on the merits, counsel is admonished to adhere to the local rules or risk having the firm's papers rejected outright.

conducted on June 6, June 13, June 15, June 16, June 20, and June 22, 2023. On June 22, 2023 the jury was charged, deliberated, and returned a verdict awarding the plaintiff $200,000 for past pain and suffering, $1,000,000 for future medical expenses, and $6,000,000 for future pain and suffering. Following the trial in this matter, the court permitted the parties to file post-trial motions. Defendant now seeks to set aside that verdict.

Analysis

A jury verdict should not be set aside as contrary to the weight of the evidence unless the moving party proves that the jury could not have reached its verdict on any fair interpretation of the evidence (*Aquino v Merha,* 168 AD3d 797, 798 [2d Dept 2019]; *Christ v Law Offices of William F. Levine & Michael B. Grossman*, 72 AD3d 721, 723 [2d Dept 2010]). This burden is a heavy one and the decision to set aside a jury verdict "must be exercised with considerable caution, for in the absence of indications that substantial justice has not been done, a successful litigant is entitled to the benefits of a favorable jury verdict" (*Nicastro v Park*, 113 AD2d 129, 133 [2d Dept 1985]). The party opposing such a motion is afforded "every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant" (*Leonard v New York City Tr. Auth.,* 90 AD3d 858, 859 [2d Dept 2011] [internal quotations omitted]). Furthermore, a decision on the amount of damages to award for personal injuries "is primarily a question of fact for the jury" (*Murphy v Ford*, 173 AD3d 882, 882 [2d Dept 2019]).

Defendants move to set aside this verdict as unsupported by the evidence or, alternatively, as excessive. Taking into account the removal of claims for a knee injury, plaintiff presented evidence of future medical expenses in the amount of $672,313.25. In light of the evidence presented, the jury's award of $1,000,000 in future medical expenses is vacated, the

award is hereby reduced in accordance with the evidence, and judgment shall be entered in the amount of $672,313.25. Defendant's motion is denied as to past pain and suffering and future pain and suffering, as defendant has not shown that the drastic remedy of disturbing a duly empaneled jury's determination is warranted as to those amounts.

Next, defendant requests a collateral source hearing, pursuant to CPLR 4545. "[F]or a defendant to be entitled to a collateral source hearing, the defendant must tender some competent evidence from available sources that the plaintiff's economic losses may in the past have been, or may in the future be, replaced, or the plaintiff indemnified, from collateral sources" (*Firmes*, 50 AD3d 18, 36 [2d Dept 2008]). Here, besides Medicaid (which, due its statutory payback requirement, is exempt from CPLR 4545), defendant does not marshal any competent evidence to show that plaintiff may benefit from a future collateral source. Defendant's request for a collateral source hearing is denied.

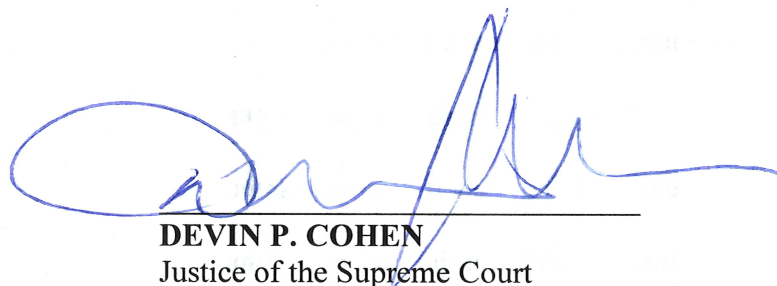
Finally, defendant advances numerous arguments about the conduct of the trial, contending that a new trial is warranted. Counsel's arguments are in line with the pattern exhibited throughout the trial of seeking to lay blame for negative outcomes on other actors, whether they be colleagues or the court. The final result in this case was in some ways counsel's own making, brought on by initially sending an associate who admitted to having no trial experience to try a potentially multi-million dollar case alone, misrepresenting material information to the court and then blaming support staff when the misrepresentation was uncovered, an ongoing effort to take control of the courtroom, and a failure to maintain a firm grasp on the law and the facts in this case.

In any event, an initial impediment to defendant's request is that "a party is not permitted to speculate upon a favorable verdict before asserting a claim that could properly be made during

trial" (*Virgo v Bonavilla*, 49 NY2d 982, 984 [1980]). At no time during the conduct of this trial did defendant move for a mistrial or for recusal. Defendant's arguments here are, therefore, untimely. Likewise, the time has passed for defendant's arguments about the jury charges. The court took written proposals from the parties, drafted its intended charging document, and informed counsel of its intent (*see* Damages Transcript at 654, 655). Counsel had the opportunity to object on the record. Counsel's motion to overturn on the verdict based on the charges is denied.

The remainder of counsel's contentions about the conduct of the trial have been considered and found to be without merit.

This constitutes the decision and order of the court.



April 10, 2024
DATE

DEVIN P. COHEN
Justice of the Supreme Court