

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

D80879
G/

_____AD3d_____

Argued - November 10, 2025

LARA J. GENOVESI, J.P.
LILLIAN WAN
JANICE A. TAYLOR
DONNA-MARIE E. GOLIA, JJ.

2024-07642
2024-07644
2024-07835

DECISION & ORDER

Aeliana Boyer, appellant, v City of New York, et al.,
respondents, et al., defendant.

(Index No. 520088/16)

Hach & Rose, LLP (Jason Levine, New York, NY, of counsel), for appellant.

Steven Banks, Corporation Counsel, New York, NY (Melanie T. West and Jonathan Schoepp-Wong of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from (1) a clerk's extract of the minutes of a jury verdict of the Supreme Court, Kings County (Richard J. Montelione, J.), dated March 26, 2024, (2) an order of the same court dated April 2, 2024, and (3) a judgment of the same court dated April 26, 2024. The order granted that branch of the motion of the defendants City of New York and the Fire Department of the City of New York which was pursuant to CPLR 4404(a) to set aside the jury verdict on the issue of liability and for judgment as a matter of law dismissing the amended complaint insofar as asserted against them. The judgment, upon the order, is in favor of those defendants and against the plaintiff dismissing the amended complaint insofar as asserted against those defendants.

ORDERED that the appeal from the clerk's extract of the minutes of the jury verdict is dismissed on the ground that no appeal lies from a clerk's extract of the minutes of a jury verdict (*see* CPLR 5512[a]; *Rockman v Brosnan*, 280 AD2d 591); and it is further,

ORDERED that the appeal from the order is dismissed (*see* CPLR 5501[a][1]; *Matter of Aho*, 39 NY2d 241, 248); and it is further,

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ORDERED that the judgment is reversed, on the law, that branch of the motion of the defendants City of New York and the Fire Department of the City of New York which was pursuant to CPLR 4404(a) to set aside the jury verdict on the issue of liability and for judgment as a matter of law dismissing the amended complaint insofar as asserted against them is denied, the jury verdict is reinstated, and the order is modified accordingly; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The appeal from the clerk's extract of the minutes of the jury verdict dated March 26, 2024, must be dismissed, as it is not appealable (*see* CPLR 5512[a]; *Rockman v Brosnan*, 280 AD2d 591, 591). Similarly, the appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action (*see* CPLR 5501[a][1]; *Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment.

The plaintiff was riding her bicycle through a green light at the intersection of Bond Street and Union Street in Brooklyn, when a collision occurred with an ambulance, which continued without stopping. The plaintiff commenced this action against the City of New York and the Fire Department of the City of New York (hereinafter FDNY), and another defendant, alleging that the ambulance unit was owned and operated by the FDNY and the City (hereinafter together the defendants). The defendants served an answer to the amended complaint denying, inter alia, the allegation that the vehicle that struck the plaintiff was owned or operated by them.

The action proceeded to trial on the issue of liability before a jury, which returned a unanimous verdict, finding, among other things, that an FDNY ambulance was involved in the accident and that the defendants were liable for the plaintiff's damages.

The defendants thereafter moved, inter alia, pursuant to CPLR 4404(a) to set aside the verdict on the issue of liability as legally insufficient and for judgment as a matter of law dismissing the amended complaint insofar as asserted against them. In an order dated April 2, 2024, the Supreme Court granted that branch of the motion. A judgment dated April 26, 2024, upon the order, was entered in favor of the defendants and against the plaintiff dismissing the amended complaint insofar as asserted against the defendants. The plaintiff appeals.

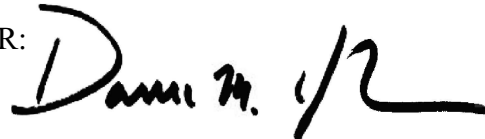
“On a legal sufficiency challenge, whether made pursuant to CPLR 4401 at the close of the plaintiffs' case or pursuant to CPLR 4404(a) to set aside the jury verdict, the relevant inquiry is whether there is any rational process by which the trier of fact could base a finding in favor of the nonmoving party” (*Salas v Bellair Laser Ctr., Inc.*, 185 AD3d 746, 747, quoting *Morgan-Word v New York City Dept. of Educ.*, 161 AD3d 1065, 1067; *see Szczerbiak v Pilat*, 90 NY2d 553, 556). For an appellate court to hold that a jury verdict is insufficient as a matter of law, it must first determine that the verdict is “utterly irrational,” meaning that there is simply no valid line of reasoning and permissible inferences which could possibly lead a rational person to the conclusion reached by the jury on the basis of the evidence presented at trial (*Salas v Bellair Laser Ctr., Inc.*, 185 AD3d at 747; *see Killon v Parrotta*, 28 NY3d 101, 108; *Campbell v City of Elmira*, 84 NY2d 505, 510).

“In considering such a motion, ‘the trial court must afford the party opposing the motion 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’” (*Krohn v Schultz Ford Lincoln, Inc.*, 246 AD3d 90, 98, quoting *Szczerbiak v Pilat*, 90 NY2d at 556). “Where the verdict can be reconciled with a reasonable view of the evidence, the successful party is entitled to the presumption that the jury adopted that view” (*Dyszkiewicz v City of New York*, 218 AD3d 546, 549 [internal quotation marks omitted]).

Here, affording the plaintiff the benefit of every inference that may properly be found from the evidence presented and considering the evidence in a light most favorable to her (*see Salas v Bellair Laser Ctr., Inc.*, 185 AD3d at 747), there was a valid line of reasoning and permissible inferences which could have led a rational jury to conclude that the ambulance was an FDNY ambulance. The GPS evidence proffered by the plaintiff placed an FDNY ambulance at the location of the accident within moments of the accident. The plaintiff is entitled to the presumption that the jury credited her testimony, as well as that of another witness identifying the red and white ambulance as an FDNY ambulance, notwithstanding the discrepancy in the plaintiff’s description of the ambulance’s driver and passenger. Consequently, the defendants were not entitled to set aside the jury verdict on the issue of liability and for judgment as a matter of law dismissing the amended complaint insofar as against them (*see Schollmeier v Metropolitan Tr. Auth.*, 243 AD3d 605).

GENOVESI, J.P., WAN, TAYLOR and GOLIA, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a stylized flourish or checkmark.

Darrell M. Joseph
Clerk of the Court