Saber v 69th Tenants Corp.
2011 NY Slip Op 33704(U)
June 13, 2011
Sup Ct, Queens County
Docket Number: 7496/2008
Judge: Janice A. Taylor

[* 1]

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR
Justice

IAS Part 15

x

NASR SABER,

Plaintiff,

- against -

69TH TENANTS CORP., CHARLES H. GREENTHAL MANAGEMENT CORP.,

Defendants.

x

69th TENANTS CORP., CHARLES H. GREENTHAL MANAGEMENT CORP.,

Third-Party Plaintiffs,

- against -

IRM M. BERGMAN and PHYLLIS M. BERGMAN,

Third-Party Defendants.

x

Index Number 7496 2008

Motion Date Jan. 11, 2011

Motion Cal. Number 32

Motion Seq. No. 5

The following papers numbered 1 to 12 read on this motion by the plaintiff for an order setting aside the jury verdict and directing that judgment be made in his favor as a matter of law or, alternatively, for a new trial.

	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	1 - 4
Answering Affidavits-Exhibits.....	5 - 9
Reply Affidavits.....	10 - 11
Other.....	12

Upon the foregoing papers, and following a conference held on March 23, 2011, it is ordered that the motion is denied.

The plaintiff commenced this action to recover damages for personal injuries he sustained, on March 28, 2005, as a result of a workplace injury which occurred in an apartment in the premises located at 150 East 69th Street in Manhattan. The building is a residential cooperative and the apartment where the accident took place was owned by defendants Ira M. Bergman and Phylis H. Bergman, who hired a designer to redecorate the unit. In turn, their designer hired numerous contractors to perform the work at the premises, including plaintiff's employer Mirrors By Jordan, Ltd. On the date of the accident, the plaintiff was sent to the subject apartment with a helper, Nicholas Caroselli, to remove old mirror panels from a bathroom ceiling in the unit. The plaintiff alleges that he fell from a ladder and sustained injury while removing a mirror panel from the ceiling.

The trial was bifurcated and involved the plaintiff's claim for damages pursuant to Labor Law section 240 (1). During the liability phase of the trial, the plaintiff testified that, at the time of the accident, he was attempting to remove a large portion of mirror weighing about sixty to seventy pounds from the ceiling of a small bathroom when it became dislodged. As he stood atop a six foot A-frame aluminum ladder, with his head about two to three inches from the nine-foot high ceiling, he tried to control the mirror so that it would not fall and hit his helper, Nicholas Caroselli, who was standing in the bathroom with him. The plaintiff testified that as he was wobbling on the ladder, the mirror hit the marble wall of the shower stall and shattered "because I lost balance." The plaintiff indicated that when the mirror shattered, he fell off the ladder and onto the floor, thereby hurting his back. The plaintiff stated that after his body hit the floor, he got up quickly to see if his young helper was okay. With regard to the ladder he was using, the plaintiff described it as a used, wobbling aluminum ladder with four feet that are covered in plastic footings. He did not complain to his employer about the condition of the ladder and stated that, due to the small size of the bathroom, there was "no room for the ladder to fall on the side or anything." Thus, the ladder on which he was working never toppled.

The plaintiff's helper Nicholas Caroselli testified that, at the time of the accident, he assisted plaintiff at the subject job by taking the pieces of glass from him as they were removed from the ceiling. After the mirror panel shattered, a section of it hit Mr. Caroselli's hard hat, whereupon he fell to the floor, faced away, ducked and covered to shield himself from the falling glass. He did not see the plaintiff fall from the ladder. Nor did he see the plaintiff's body on the floor or observe the

plaintiff getting up from the floor after the accident. When Mr. Caroselli stood up, he saw that the plaintiff standing and rubbing his shoulder.

The plaintiff's motion for a directed verdict on his Labor Law section 240(1) claim was denied and the case was presented to the jury with the following two-part questionnaire: "Question #1- Was the ladder being used by plaintiff Nasr M. Saber on March 28, 2005 so placed, operated and maintained as to give him proper protection?" "Question #2- Was the failure on March 28, 2005 to provide plaintiff Nasr M. Saber with a ladder so placed, operated and maintained as to give him proper protection a substantial factor in causing plaintiff's accident?" The jury answered "No" to both questions. The plaintiff claims that the verdict should be set aside because it was against the weight of the evidence and trial errors were committed by the court due to the submission of the second question of the subject two-part questionnaire and the court's admission into evidence of a Workers' Compensation form signed by the plaintiff.

First, contrary to the plaintiff's contentions, the two-part jury questionnaire was not improper since there were two elements to the plaintiff's Labor Law section 240 claim; to wit- that there was a violation of the statute and that the violation was a contributing cause of his injury (***Blake v Neighborhood Housing Serv***., 1 NY3d 280 [2003]). As such, the fact that there was a violation of the statute does not alone establish a *prima facie* claim. Here, there was evidence submitted upon which the jury could base a finding that whatever was wrong with the ladder did not cause the plaintiff's fall or that the plaintiff never fell.

Second, 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 ***(Lolik v Big V Supermarkets***, 86 NY2d 744 [1995]; ***Guclu v 900 Eighth Avenue Condominium, LLC***., 81 AD3d 592 [2011]). The determination as to whether a jury verdict should be set aside as against the weight of the evidence does not involve a question of law, but rather requires a discretionary balancing of many factors (***Cohen v Hallmark Cards***, 45 NY2d 493 [1978]). "[T]he discretionary power to set aside a jury verdict and order a new trial 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. Fact-finding is the province of the jury, not the trial court, and a court must act warily lest overzealous enforcement of its duty to oversee the proper

administration of justice leads it to overstep its bounds and unnecessarily interfere with the fact-finding function of the jury to a degree that amounts to an usurpation of the jury's duty" (***Nicastro v Park***, 113 AD2d 129 [1985]; *see*, ***Healy v Carmel Bowl, Inc***.65 AD3d 665 [2009]). It is also within the province of the jury to make determinations as to the credibility of the witnesses, and great deference in this regard is given to the jury, which had the opportunity to see and hear the witnesses (***Exarhouleus v Green 317 Madison, LLC***, 46 AD3d 854 [2007]). Moreover, "particular deference has traditionally been accorded to jury verdicts in favor of defendants in tort cases because the clash of factual contentions is often sharper and simpler in those matters and the jury need not find that a defendant has prevailed by a preponderance of the evidence but rather may simply conclude that the plaintiff has failed to meet the burden of proof requisite of establishing the defendant's culpability" (***Nicastro v. Park***, 113 AD2d 129 [1985], *supra*. Based upon the evidence presented to it herein, it cannot be stated that the jury's verdict is against the weight of the evidence.

The plaintiff's remaining contentions are rejected as without merit.

Dated: June 13, 2011

J.S.C.