

LaGuerre v Holley

2013 NY Slip Op 32877(U)

April 12, 2013

Sup Ct, Nassau County

Docket Number: 22408-09

Judge: Steven M. Jaeger

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEVEN M. JAEGER,
Acting Supreme Court Justice

JEAN LAGUERRE and AMINTHA NELSON,

Plaintiff,

-against-

JAMES T. HOLLEY, TIFFANY HOLLEY AND
THE VILLAGE OF HEMPSTEAD,

Defendants.

TRIAL/IAS, PART 41
NASSAU COUNTY
INDEX NO.: 22408-09

MOTION SUBMISSION
DATE: 2-27-13

MOTION SEQUENCE
NO. 004

Plaintiffs, JEAN LAGUERRE and AMINTHA NELSON (hereinafter LAGUERRE) have moved this Court for an order pursuant to CPLR 4404(a) setting aside the jury verdict herein and directing judgment on liability as a matter of law in favor of plaintiffs or, alternatively, for a new trial as the verdict was against the weight of the evidence. Defendants JAMES HOLLEY and TIFFANY HOLLEY (hereinafter HOLLEY) oppose said relief. The claim against The Village of Hempstead was dismissed prior to trial.

This matter went to trial before the Court and a jury commencing on October 16, 2012. The jury rendered a verdict on October 18, 2012 that defendants were not negligent. (The issues of proximate cause and plaintiff's negligence were never reached pursuant to the court's instructions). At trial, the jury heard the testimony of plaintiff JEAN LAGUERRE, defendant JAMES HOLLEY, Village Police Officer Russell Harris, and portions of the deposition of two Village employees, Dolores McQueen and Teddy McLean.

Plaintiffs brought this action to recover for personal injuries allegedly caused by defendant HOLLEY's negligence when plaintiff tripped and fell over a raised sidewalk flag in front of defendant's home on December 5, 2008.

Plaintiff has only provided the Court on this motion with the transcript of a portion of defendant HOLLEY's testimony. Plaintiff did not provide the Court with a copy of its instructions on the law, but it does not appear that counsel for plaintiff objected to the Court's instructions either before or after the charge (except for requesting a curative instruction concerning the charge pursuant to PJI 2:29 on Village ordinances).

The crux of Plaintiff's argument is: that plaintiff was injured when he tripped and fell on the sidewalk in front of defendant's home; that defendant HOLLEY knew of the defect for approximately 9 months prior to the accident; that defendant not act reasonably in failing to fix the defect; and, that it is not a valid defense to claim ignorance of the relevant Village ordinances.

Plaintiff contends that "no jury could fairly conclude that defendant's conduct... was 'reasonable' and 'prudent'...." Plaintiff argues that a reasonably prudent person with knowledge of a dangerous sidewalk defect "must do something to fix the actual problem. (emphasis added) That is, he must actually be prudent; he must act with "attentiveness" and "good judgment". (emphasis added) Finally, plaintiff contends that the jury misinterpreted or misunderstood the Court's instructions and that defendant's "conduct fell short of being 'reasonably prudent'".

In support of this argument, plaintiff points to the following facts testified to by defendant:

The defendants owned 145 Willow Avenue on December 5, 2008, the date of Plaintiff's accident. *Transcript, page 5, line 1.*

The defendant moved into 145 Willow Avenue on or about March 17, 2008. *Transcript, page 5, lines 9-12.*

The defendant testified that he noticed the subject defect, the raised sidewalk flag, when he moved into the home in March, 2008. *Transcript, page 6, line 9 through page 7, line 4.*

The defendant also testified that the raised sidewalk flag in front of 145 Willow Avenue looked the same way on the day of the accident as it is depicted in photographs "1", "2", "3" and "5". *Transcript page 7, line 5 through page 8, line 4; page 27, line 5 through page 28, line 3; and page 42, lines 14 through page 45, line 6.*

There was no dispute that the raised sidewalk flag was on the sidewalk in front of 145 Willow Avenue. *Transcript page 19, line 19, and page 11, line 22.*

The defendant wanted to fix the raised flag to make it safe. *Transcript, page 15, lines 6-17.*

The motions previously associated with post-trial proceedings are now consolidated in CPLR 4404. Two of said motions superseded by the Rule are the motion for judgment notwithstanding the verdict ("judgment n.o.v.") and the motion for a new trial on the ground that the verdict is contrary to the weight of the evidence.

The motion for judgment notwithstanding the verdict is a motion based on all of the evidence presented. If the court finds the verdict unsupportable and finds that the facts are clear it may, as a matter of law, grant judgment to the other side. The legal standard for such a motion is largely the same whether it is made during (CPLR 4401), after (CPLR 4404) or before (CPLR 3212) trial.

Pursuant to CPLR 4404(a), a trial court has the discretionary authority to set aside a jury verdict. However, it should be sparingly exercised and only where no rational jury could have reached the verdict on the basis of the evidence presented. See, Lolik v. Big V Supermarkets, 86 NY2d 744, 746 (1995); Cohen v. Hallmark Cards, 45 NY2d 493, 498-499 (1978); Raugalas v. Chase Manhattan, 305 AD2d 654 (2nd Dept. 2003).

The test to be applied is whether “there is simply no valid line of reasoning and permissible inferences which could possibly (have) lead rational men (and women) to the conclusion reached by the jury on the basis of the evidence presented at trial” Cohen, 45 NY2d at 499; see also, Adamy v. Ziriakus, 92 NY2d 396, 400 (1998); Lolik, 86 NY2d at 746. “In considering such a motion, the evidence must be construed in the light most favorable to the nonmoving party, and the motion should not be granted where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question” Cathey v. Gartner, 15 AD3d 435, 436 (2d Dept. 2005); see also, Easton v. Falzarano, 102 AD3d 826 (2d Dept. 2013).

This “...test is a harsh one because a finding that a jury verdict is not supported by sufficient evidence leads to a directed verdict...without resubmission of the case to a jury”. Nicastro v. Park, 113 AD2d 129, 132 (2d Dept. 1985). As Judge Gabrielli noted in Cohen, supra at 499, if it is not “utterly irrational” for a jury to have reached the result it has determined, the court may not conclude as a matter of law that the verdict is not supported by the evidence.

It is plaintiff's contention that based on defendant's own testimony, there is no fair interpretation of the evidence that justifies the jury's finding that defendant was not negligent. See, e.g., Mintz v. Festa, 29 AD2d 689 (2d Dept.) aff'd 23 NY2d 750 (1968). However, plaintiff's argument in essence is that defendant's failure to take affirmative steps to repair the defect was not reasonably prudent as a matter of law ("...he must do something to fix the actual problem"). Plaintiff further contends that the jury could not fairly conclude that defendant's conduct was reasonable under the circumstances and that the jury "misinterpreted and/or misunderstood" the Court's instructions on negligence.

The Court disagrees. It cannot be said that it was "utterly irrational" for the jury to have found in favor of defendants. In considering all of the evidence presented at trial, including plaintiff's testimony and the testimony of the Village's employees, the jury had the opportunity and obligation to evaluate credibility and weigh the totality of the evidence. While the Court charged the jury as to the applicable Village ordinances, violation of same, if found by the jury, is only "some evidence" of negligence. (PJI 2:29) Further, even if the jury determined there was such a violation by defendant, that is only one factor to be considered in determining the issue of defendant's negligence. The facts were not so clear or one-sided as to justify only one possible conclusion.

While there is no doubt that defendant owed a duty to plaintiff, that does not mandate an affirmative duty to act as a matter of law. Rather, the law imposes the duty to act "reasonably in the light of what could have been foreseen" and the jury was so

charged. PJI 2:12. This includes what was also charged in PJI 2:10, that negligence arises from either doing an act that a reasonably prudent person would not have done or from failing to do an act a reasonably prudent person would have done. Plaintiff contends, without support, that affirmative steps to fix the defect were required and this justifies the Court to set aside the verdict as a matter of law. The jury could well have found that the actions taken by defendant (as testified to by defendant and the Village witnesses) were reasonable and prudent. Thus, the Court finds it was not irrational for the jury to have found defendant not negligent. Accordingly, the motion to set aside the verdict as a matter of law is denied.

Alternatively, a motion for a new trial based on a finding that the verdict is against the weight of the evidence may be granted if the trial court is too “uncomfortable” with the verdict to let it stand but not enough to enter judgment for the other side. See Mann v. Hunt, 283 AD 140 (3d Dept. 1953). In writing for the Second Department in Nicastro v. Park, supra at 133-134, Justice Lazer noted:

The fact that determination of a motion to set aside a verdict involves judicial discretion does not imply, however, that the Trial Court can freely interfere with any verdict that is unsatisfactory or with which it disagrees. A preeminent principle of jurisprudence in this area is that the 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 a usurpation of the jury's duty (citations omitted). This is especially true if a verdict is contested solely on weight of the evidence grounds and interest of justice factors have not intervened to flavor the judicial response to the motion. Absent such complications, the challenge is directed squarely at the accuracy of the jury's fact finding and must be viewed in that light.

It is the jury's province to evaluate credibility of the various witnesses and to accept or reject all or part of a witness' testimony. In determining a motion to set aside a verdict, the court should act only if there is no fair or rational basis for the jury's conclusion based upon a review of all the evidence.

Whether a jury verdict should be set aside as contrary to the weight of the evidence does not involve a question of law, but rather requires a discretionary balancing of many factors (cits. omitted). It is for the jury to make determinations as to the credibility of the witnesses, and it is accorded great deference as it had the opportunity to see and hear the witnesses (cit. omitted). Under the circumstances, the jury's determination was supported by a fair interpretation of the evidence....

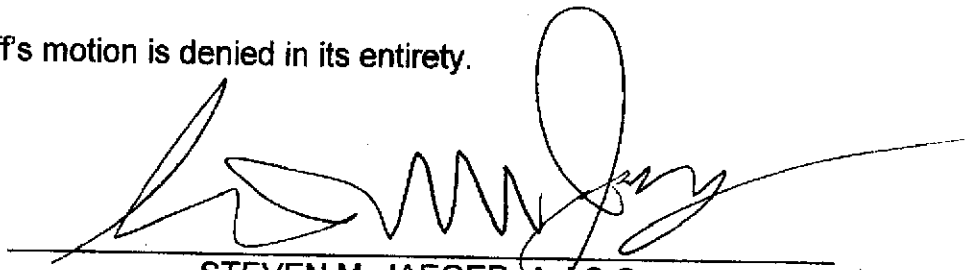
Davison v. NYCTA, 63 AD3d 871 (2d Dept. 2009).

As the Nicastro Court noted, fact finding is the jury's province and setting aside a jury verdict must be exercised with considerable caution. On the evidence adduced at this trial, this jury's finding as to question number 1 is supported by a fair view of evidence, even when viewed in the light most favorable to the non movant.

To the extent plaintiff seeks to set aside the verdict that defendant was not negligent as against the weight of the evidence, the motion is denied.

Accordingly, plaintiff's motion is denied in its entirety.

Dated: April 12, 2013

A handwritten signature in black ink, appearing to read 'Steven M. Jaeger', written over a horizontal line.

STEVEN M. JAEGER, A.J.S.C.

ENTERED

APR 17 2013

**WABASH COUNTY
COURTY CLERK'S OFFICE**