

Mancini v Metropolitan Suburban Bus Auth.
2014 NY Slip Op 33906(U)
October 7, 2014
Supreme Court, Nassau County
Docket Number: 7192-2009
Judge: James P. McCormack
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**SUPREME COURT - STATE OF NEW YORK
TRIAL/IAS TERM, PART 40 NASSAU COUNTY**

PRESENT:

Honorable James P. McCormack
Acting Justice of the Supreme Court

_____ x

JOSEPH J. MANCINI,

Plaintiff(s),

Index No. 7192-2009

-against-

Motion Seq. No.: 002

Motion Submitted: 09/03/14

**METROPOLITAN SUBURBAN BUS AUTHORITY
d/b/a MTA LONG ISLAND BUS and ERIC S.
PUNTARICH,**

Defendant(s).

_____ x

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....	X
Affirmation in Opposition.....	X
Reply Affirmation.....	X

Plaintiff moves this court for an order, pursuant to CPLR § 4404, setting aside the jury verdict rendered on May 21, 2014 and directing judgment be entered in favor of the Plaintiff as a matter of law or, alternatively, ordering a new trial on the grounds that the verdict is contrary to the weight of the evidence and the interests of justice.

This action arises out of a motor vehicle accident that occurred on July 1, 2008.

The court conducted a jury trial which began on May 14, 2014 and concluded with a jury

[* 2]
verdict on May 21, 2014.

On May 21, 2014, the jury rendered a verdict in the form of written answers subscribed on a verdict sheet furnished to them by the court. On the verdict sheet the jury placed an "X" next to the answer "YES" to the following question:

1. Was the defendant, Erich Puntarich, negligent in the operation of a bus on July 1, 2008?

The jury then answered "NO" to the following question:

2. Was the negligence of the defendant, Erich Puntarich, a substantial factor in causing the motor vehicle accident on July 1, 2008?

CPLR Rule 4404 provides, in pertinent part:

(a) Motion after trial where jury required. After a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as it deemed reasonable by the court.

For this court to grant Plaintiff's motion to set aside the verdict as a matter of law, pursuant to Rule 4404(a) of the CPLR, "... the court must conclude that there is 'simply no valid line of reasoning and permissible inferences which could possibly lead rational [people] to the conclusion reached by the jury on the basis of the evidence at trial' "

(Firmes v Chase Manhattan Automotive Finance Corp., 50 AD3d 18, 29 [2d Dept 2008]).

[* 3]

Moreover, 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 on any fair interpretation of the evidence” (*Nicastro v Park*, 113 AD2d 129, 134 [2d Dept 1985]). “[T]he determination of the jury which observed the witnesses and the evidence is entitled to great deference” (*Hernandez v Carter & Parr Mobile*, 224 AD2d 586, 587 [2d Dept 1996]).

This court finds and determines that on the record before the court there is clearly a view of the evidence that supports the verdict of the jury herein and that a fair interpretation of the evidence could result in the conclusion that Defendant Puntarich was both negligent in his operation of the bus, but that his negligence was not a substantial factor in causing the accident.

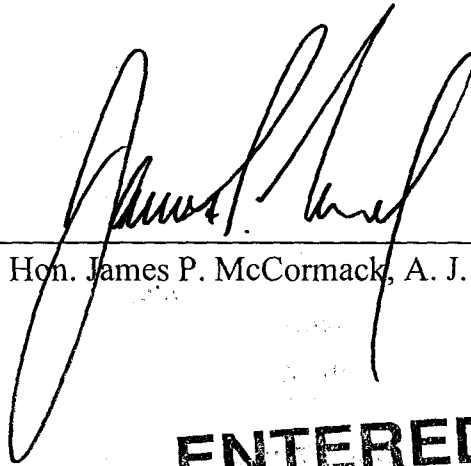
Furthermore, “When the motion is by the Plaintiff to set aside a verdict in favor of Defendant, the motion should not be granted unless the evidence preponderated so greatly in Plaintiff’s favor that the jury could not have reached its conclusion on a fair interpretation of the evidence” (*Tannenbaum v Mandell*, 51 AD2d 593 [2d Dept 1976]).

After a careful review of all the papers submitted for this court’s consideration, it is the finding and determination of this court that there is nothing about the jury’s verdict, as recorded on the Verdict Sheet, that is against the weight of the evidence proffered at the trial.

Accordingly, this Court will not disturb the jury’s verdict. Plaintiff’s motion is therefore DENIED in its entirety.

This constitutes the Decision and Order of the Court.

Dated: October 7, 2014
Mineola, N.Y.



Hon. James P. McCormack, A. J. S. C.

ENTERED

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