

Xiu Rong Yang v Shiu
2019 NY Slip Op 30988(U)
March 29, 2019
Supreme Court, New York County
Docket Number:
Judge: Verna Saunders
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. VERNA L. SAUNDERS PART IAS MOTION 5

Justice

-----X INDEX NO. 155318/2014

XIU RONG YANG, XIAO QIANG LI and YANG YANG
LEE, and infant by his natural mother and guardian YING
YANG and YING YANG individually,
Plaintiffs,

MOTION SEQ. NO. 004

- v -

DECISION AND ORDER

MARY SHIU,
Defendant.

-----X
This action arose from a fire which occurred on July 11, 2013 in the hallway of an apartment building located at 17 Pike Street, New York, New York where plaintiffs allege they suffered personal injuries due to a lack of egress caused by blocked fire escapes.

Plaintiffs move pursuant to CPLR § 2004 seeking an extension of time and for the court to consider their untimely post-trial motion pursuant to CPLR § 4404(a) seeking to set aside the defense jury verdict and set a new trial on the ground that the verdict is contrary to the weight of the evidence.

Pro se, defendant, Mary Shiu opposes the motion arguing that the jury, who was selected solely by plaintiff's counsel, reached a just verdict after "prudent deliberation" and argues that that motion should be denied and the verdict left undisturbed.

CPLR § 4404(a) permits a trial court to set aside a jury 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 can order a new trial 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 a reasonable time as determined by the court (CPLR § 4404[a]). However, a jury's verdict should not be lightly overturned, and the plaintiff has a heavy burden of demonstrating that the preponderance of the evidence is not great that the jury could not have reached its verdict upon any fair interpretation of the law. (*Pavlou v City of NY*, 21 AD3d 74 [1st Dept 2005] citing, *Lolik v Big V Supermarkets*, 86 NY2d 744 [1995].) Pursuant to CPLR § 4405, a post-trial motion must be made within fifteen days after the verdict or discharge of the jury. CPLR § 2004 allows the court to extend the time by fixed by statute, rule, or order upon such terms as may be just and upon good cause shown.

Considering that plaintiff's one day delay in filing its post-trial motion is *de minimis*, the extension is granted, and the court will consider the instant post-trial motion.

For a court to determine that as a matter of law a jury verdict is not supported by sufficient evidence, the court must find that based on the evidence presented at trial, "there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [people] to the conclusion reached by the jury." (*Cohen v Hallmark Cards, Inc.*, 45 NY2d 493, 499 [1978]). It requires the court to view the evidence in the light most favorable to the prevailing party, for the

movant to assume the facts testified to by the prevailing party's witnesses to be true and to grant all favorable inferences flowing from the evidence to the prevailing party. (See *S. Kornblum Metals Co. v Intsel Corp.*, 38 NY2d 376 [1976]). Judgment notwithstanding the verdict is not appropriate where issues of credibility are involved as matters of credibility and the weight to be accorded the testimony are within the province of the jury. (*Bodlovich v Carucci*, 38 AD2d 699, 700 [1st Dept 1972]).

Trial

A jury trial in this matter was conducted from August 1, 2018 to August 6, 2018. At the conclusion, the jury found that defendant was not negligent. The plaintiffs Xiu Rong Yang, Xiao Qiang Li, Yang Yang Lee and Ying Ying Yang each testified. As well, Shao Hang testified on behalf of plaintiffs. While none of plaintiffs' treating physicians testified, Dr. Robert Irwin testified as an expert in internal medicine.

Thomas Shiu testified on behalf of *pro se* defendant, Mary Shiu, who also testified.

Plaintiff Xiu Rong Yang testified, in sum and substance, that on July 11, 2013, she was inside of her apartment 4B and heard a "loud sound boom" but did not hear fire alarm sounds. When she opened the door to her apartment, she observed black smoke in the hallway. She closed the door to her apartment and went to the fire escape. She was unable to open the window [fire escape] because there was "stuff blocking the passage." She tried to open the kitchen window but had difficulty. She tried to open the bathroom window but was also unsuccessful. Ms. Yang remained inside of the apartment bathroom. She woke in the hospital on August 12, 2013 and was told that she was unconscious from July 11, 2013 until August 12, 2013. Ms. Yang testified that there was no smoke alarm equipment inside her apartment or in the hallways and that the landlord never checked for or tested smoke alarms.

On cross-examination of Xiu Rong Yang, it was elicited that she resides in a two-bedroom apartment and that each bedroom contains a bunk bed. Aside from herself and her husband, five other people reside in the apartment. Ms. Yang, stated, however, that she and her husband only sleep in the apartment once a week as everyone takes turns using the apartment. Ms. Yang further testified that she did not use an air conditioner but that some of the kind of indoor machine required a small tube be placed through an opening in the window. When asked if the billboard which she was alleges was in front of the window was in the window or on the steps of the fire escape, Ms. Yang testified that she did not know.

Shao Hang, husband of Xiu Rong Yang, testified that there were no sprinklers in the apartment or hallway.

Plaintiff Xiao Qiang Li testified that he moved into apartment 3C about one month prior to the fire. On the date of the fire, he heard a "big explosion" and then observed "heavy smoke coming from the staircase." He was unable to leave because the smoke was "very heavy." He further testified that he tried to go outside using the fire escape, but the window was locked. When asked who locked the window he testified, "the people who were in the apartment before. I should say the landlord." On August 12, 2013, Mr. Li woke up in the hospital. He testified that he did not observe any smoke detectors in his apartment. On cross-examination, Mr. Li testified that he moved from apartment 4D to apartment 3C but was unsure whether his wife obtained permission for the move. He later testified that his wife did obtain permission to move from one apartment to another.

Yang Yang Lee, son of plaintiff Xiao Qiang Li, was in apartment 3C when he heard a “loud boom sound.” He opened the apartment door and observed “thick black smoke” in the hallway. He attempted to exit through the fire escape but discovered that a cage key was needed to open it. Mr. Lee recounts waking later that night in the hospital. He testified that there were no sprinklers or fire alarms in the apartment.

Plaintiff Ying Yang testified that on the date of the fire she was not home, but she received a call that her home was on fire. When she arrived home, she observed fire trucks.

Dr. Robert Irwin, a retired internal medicine physician who reviewed plaintiffs’ medical records, testified on behalf of the plaintiffs. He testified as to plaintiffs’ injuries, causation and medical treatment. He opined as to plaintiffs’ future medical treatment needs.

Defendant, Mary Shiu was not at home when the fire occurred. She testified that it was a small fire which occurred in the hallway of her building due to the use of a “bug bomb.” She testified that she never saw or used a “bug bomb.” Ms. Shiu testified that some of the plaintiffs were not the tenants of record but that the tenants created rooms in the kitchen and in the closets to allow other people to reside there. Defendant asserted that the fire may have been the result of arson.

As to the fire alarms and sprinkler system, defendant testified that because the building is between 80-100 years old it is not required to have fire alarms or a sprinkler system. She also testified that tenants often smoke [cigarettes] and take out the smoke detectors to avoid the beeping sound.

Defendant’s husband, Thomas Shiu, testified. Mr. Shiu collects rents and undertakes repairs. Mr. Shiu testified that he did not know the plaintiffs herein who allegedly reside in the apartments. He testified that he collected rent from the tenants of record. He also testified that the apartment building did not have a sprinkler system because it is an old building. However, the hallways and apartments have smoke detectors that he installed himself. He further testified that some of the tenants change the locks to the apartments and fail to provide him with a key. Mr. Shiu stated that if tenants do not report issues with their smoke detectors he is unaware but avers that he changes the batteries in the detectors in the hallways when needed. Mr. Shiu also testified that some tenants place partitions in the apartments despite his instructions not to do so.

As to the alleged billboard on the fire escape, Mr. Shiu admitted that the billboard belongs to him but that it is movable and does not prevent access to the fire escape.

Analysis and Conclusion

Plaintiffs argues that Mr. Shiu was hired by defendant to be the superintendent of the building and that Mr. Shiu knew the plaintiffs resided on the premises because he regularly went to their apartments to collect rent. Plaintiff further argues that pursuant to the NYC Fire Department record in evidence, no “detectors” were found in the apartments of the subject premises. According to the fire safety plan, also admitted into evidence, defendant was required to keep all means of egress free from obstructions. Plaintiffs argue that defendant knew that an object blocked the fire escape in Xiu Rong Yang’s apartment and knew that the window in Xiao Qiang Li and Yang Yang Lee’s apartment was locked and needed a cage key. Additionally, plaintiffs assert that NYC Buildings Violation summary show that defendant blocked fire escapes at the second, third and

fourth floors. Plaintiffs assert that there was legally sufficient evidence to support a finding the defendant was negligent insofar as the building lacked smoke detectors or fire alarm systems, fire escapes and windows were blocked or locked and thus, defendant failed to use reasonable care to keep the premises in a reasonably safe condition.

Plaintiffs further contend that the court correctly charged the jury that “the owner of a building has to use reasonable care to keep the premises in a reasonably safe condition for the protection of person or persons whose presence is reasonably foreseeable.” Therefore, the jury’s verdict that defendant was not negligent is irrational and not supported by the evidence. Plaintiff also asserts that defendant made highly prejudicial statements during the trial, despite the court’s ruling, such as “This is in Chinatown, okay”, asserting that there are numerous “undocumented” people and likening them to “cockroaches.”

In opposition, defendant argues that plaintiffs’ counsel selected all of the jurors; that they were of diverse backgrounds; that the jurors worked hard to reach a fair verdict; and that they did so prudently and without bias. She asserts that plaintiffs were not the tenants of record and further, that they created the unsafe situation.

Specifically, defendant argues that it is common for building occupants in Chinatown to erect illegal partitions in order to allow other persons to reside in their apartments. Defendant further argues that even when the illegal partitions are removed, the occupants rebuild them.

In addition to building partitions, defendant argues that tenants also change the locks without permission and without providing a key.

Here, defendant maintains that she did not know the plaintiffs, as they were not tenants of record, but people who moved in without her knowledge and/or permission. Plaintiff further asserts that her husband, who collects rent around 10:00 PM, only collected rent from known tenants and did not enter the apartments at the late hour. However, defendant concedes that she did not take action against the illegal tenants once she became aware of them. Nevertheless, defendant maintains Mr. Lee and Ms. Yang did not exit their respective apartments, as did the other residents in the building, because they were asleep, likely due to working late hours, in windowless rooms they created in the apartment kitchens or closets. Defendant also maintains that plaintiffs’ windows were blocked by air conditioners or locked by them in order to protect cash inside of their apartments.

Defendant further avers that the sign outside did not prevent use of the fire escape. Moreover, defendant asserts that because the plaintiffs were “newcomers” they did not know how to release the hinge and pull down the fire escape.

Defendant asserts that her husband installed fire alarms in the hallway and inside of every apartment but that occupants who smoke often remove smoke alarms to avoid the “annoying beep sound.” Defendant disputes the fire report stating that no fire detectors were found as she found them scattered on the floor after the fire. Defendant also avers that she did not violate the Court’s ruling not to discuss immigration.

“In making the determination to set aside the verdict as against the weight of the evidence, a court must proceed 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. Indeed,

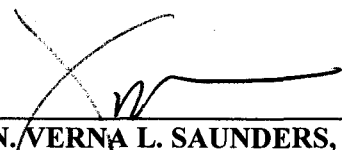
the court must cautiously balance the great deference to be accorded to the jury's conclusion against the court's own obligation to assure that the verdict is fair, and the court may not employ its discretion simply because it disagrees with a verdict, as this would unnecessarily interfere with the fact-finding function of the jury to a degree that amounts to an usurpation of the jury's duty." (McDermott v Coffee Beanery, Ltd., 9 AD3d 195 [1st Dept 2004]).

Despite plaintiffs' assertions to the contrary, there is no basis upon which to conclude that the jury did not reach its verdict based upon a fair interpretation of the evidence. There was no dispute that plaintiffs were injured as a result of the fire and thus, the medical expert's testimony would have served only as a means for the jury to assess the amount of damages warranted in the event the jury found defendant to be negligent.

However, as to liability, no witness testimony was offered as to the New York Fire Department Incident Report, the Department of Buildings violations, or the New York Fire Department Safety Plan. Hence, the jury was tasked with drawing its conclusion from the documents admitted. In this regard, plaintiffs cannot argue that the jury's verdict went against the weight of evidence which was not supported, corroborated, or explained through competent credible testimony. The jury was left to draw inferences as to the evidence admitted and accord same the appropriate weight in its view. Further, the jury was tasked with considering all the testimony provided, most of which was contradictory, and determining the credibility of each witness. This Court believes that the diverse panel of jurors who heard this case appreciated its difficulty and deliberated carefully, considering all of the evidence presented, prior to rendering its verdict.

Based upon the foregoing, the motion to set aside the verdict is denied and the verdict will not be disturbed.

March 29, 2019


HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE