

Avila v VVFJ Realty, LLC

2019 NY Slip Op 34912(U)

December 23, 2019

Supreme Court, Kings County

Docket Number: Index No. 514154/2016

Judge: Genine D. Edwards

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At Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York, on the 23rd day of December 2019.

PRESENT:

Hon. Genine D. Edwards
Justice, Supreme Court

-----X
FELICIA AVILA

Plaintiff,

Index No. 514154/2016

-against-

DECISION/ORDER

VVFJ REALTY, LLC and EASY FAT TRADING,
INC.,

Defendants.
-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affirmation.....	1
Affirmation in Opposition.....	2
Affirmation in Reply.....	3

Following a trial in this personal injury action, Felicia Avila (“plaintiff”) moves, pursuant to CPLR §4404, to set aside the jury’s verdict and remand the case for a new trial.

Factual and Procedural Background

Plaintiff alleges that on March 3, 2016 she was seriously injured after falling in front of 1225 Willoughby Avenue in Brooklyn, New York. She commenced this action by filing a summons and verified complaint on August 3, 2016, alleging that her fall and

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injuries were caused by the negligence of defendants VVFJ Realty, LLC and Easy Fat Trading, Inc. (“defendants”).

On March 26, 2019, at trial, plaintiff testified that on a dark, cold March 3, 2016 evening, she was walking to a fruit stand a few blocks from her home. En route she encountered a parked truck blocking the sidewalk. To avoid the truck, she walked around the front of the truck and tripped and fell. She was not aware of what she tripped over. Plaintiff further testified that four days later, she returned to the scene of the accident with her friend. While there, plaintiff, for the first time, saw the protruding pipes and determined that they must have caused her to fall.

Vincent Tom appeared on the defendants’ behalf. Mr. Tom testified that the metal pipes could not have protruded from the sidewalk at the time of the accident because the shop had closed for the day. When the shop is closed the pipes do not protrude because a gate is drawn at the location of the pipes.

The jury returned a verdict finding defendants negligent but not a proximate cause of plaintiff’s accident. Plaintiff moved to set aside the jury verdict and remand the case for a new trial on the basis that the verdict is inconsistent and against the weight of the evidence.

Discussion

The Court has the discretion to set aside a verdict and order a new trial on the basis that the verdict is contrary to the weight of the evidence. CPLR §4404; *Killon v. Parrotta*, 28 N.Y.3d 101, 42 N.Y.S.3d 70 (2016). This discretionary power must be exercised with extreme caution because great deference is owed to a jury’s verdict. *See*

Fruendt v. Waters, 164 A.D.3d 559, 83 N.Y.S.3d 324 (2d Dept. 2018); *Miller v. Steinberg*, 164 A.D.3d 492, 82 N.Y.S.3d 597 (2d Dept. 2018).

“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.” *Victoria H. v. Board of Educ. of City of New York*, 129 A.D.3d 912, 11 N.Y.S.3d 668 (2d Dept. 2015) quoting *Ruggiero v. Weth*, 122 A.D.3d 828, 996 N.Y.S.2d 670 (2d Dept. 2014); *See Lolik v. Big V Supermarkets, Inc.*, 86 N.Y.2d 744, 631 N.Y.S.2d 122 (1995). “A jury’s finding that a party was at fault but that such fault was not a proximate cause of the accident is inconsistent and [contrary to the] weight of the evidence only when the issues are so inextricably interwoven as to make it logically impossible to find negligence without also finding proximate cause.” *Cordice v. New York City Transit Authority*, 171 A.D.3d 854, 95 N.Y.S.3d 874 (2d Dept. 2019) quoting *Zhagui v. Gilbo*, 63 A.D.3d 919, 883 N.Y.S.2d 222 (2d Dept. 2009). “It is for the jury to make determinations as to the credibility of the witnesses, and great deference in this regard is accorded to the jury, which had the opportunity to see and hear the witnesses...[a] jury may believe or disbelieve the testimony of a witness, or believe portions of the testimony and disbelieve others.” *Scalogna v. Osipov*, 117 A.D.3d 934, 987 N.Y.S.2d 395 (2d Dept. 2014); *See Young Mee Oh v. Koon*, 140 A.D.3d 861, 35 N.Y.S.3d 116 (2d Dept. 2016); *Crooks v. E. Peters, LLC*, 103 A.D.3d 828, 960 N.Y.S.2d 165 (2d Dept. 2013); *Wasserman v. Wong*, 181 A.D.2d 672, 581 N.Y.S.2d 221 (2d Dept. 1992).

Contrary to plaintiff’s contention, the jury verdict that defendants’ negligence was not a proximate cause of plaintiff’s accident was not against the weight of the evidence.

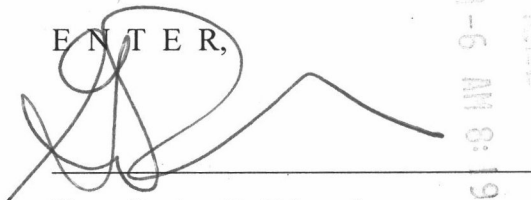
Given plaintiff's testimony that the first time she saw the metal pipes and determined that they caused her to fall was when she returned with her friend four days after the accident, the jury could have properly decided that plaintiff's testimony regarding causation lacked credibility. *See Scalogna*, 117 A.D.3d 934; *Young Mee Oh*, 140 A.D.3d 861; *Crooks*, 103 A.D.3d 828.

Conclusion

Accordingly, plaintiff's motion to set aside the verdict as against the weight of the evidence and remand the case for a new trial is denied.

This constitutes the Decision/Order of this Court.

ENTER,



Hon. Genine D. Edwards
J. S. C.

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