

30-32 W. 31st LLC v Heena Hotel LLC
2022 NY Slip Op 33339(U)
October 1, 2022
Supreme Court, New York County
Docket Number: Index No. 651918/2012
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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30-32 WEST 31ST LLC, ANDREW IMPAGLIAZZO,

Plaintiffs,

- v -

HEENA HOTEL LLC, TERRA NOVA TITLE &
SETTLEMENT SERVICES, INC., AND, XYZ CORP.,
KHANDUBHAI PATEL, NAYAN PATEL, B.L. PATEL,
CHAMP PATEL, HAMENT PATEL, NCBL NY, LLC., HY
POINT PROJECT & DEVELOPMENT LLC
(COUNTERCLAIM), RENOTAL CONSTRUCITON INC
A/K/A RENOTAL CONSTRUCTION CORP
(COUNTERCLAIM),

Defendants.

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INDEX NO. 651918/2012

MOTION DATE 06/22/2022,
06/06/2022

MOTION SEQ. NO. 021 022

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 021) 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 798, 799, 800, 801, 816, 817, 818, 819

were read on this motion for DIRECTED VERDICT, JUDGMENT NOTWITHSTANDING THE VERDICT.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 820, 821, 822

were read on this motion for JUDGMENT NOTWITHSTANDING THE VERDICT.

Plaintiffs 30-32 West 31st LLC (“30-32”) and Andrew Impagliazzo (“Impagliazzo” and with 30-32 “Plaintiffs”) move pursuant to CPLR 4401 and 4404(a) to set aside the jury’s verdict solely as to 30-32’s fraud claim against Defendants/Counterclaim Plaintiffs Heena Hotel LLC (“Heena”) and Nayan Patel (“Patel” and with Heena “Defendants”) and increase the jury’s damages award or, in the alternative, grant a new trial. Defendants move pursuant to CPLR 4404(a) for a judgement notwithstanding the verdict against Plaintiffs or, in the alternative,

reducing the jury's damages award, or, in the additional alternative, entering judgment notwithstanding the verdict in favor of Heena. Both motions are DENIED.

BACKGROUND

Following a nine (9) day trial between May 9, 2022 through May 20, 2022, the jury returned a unanimous verdict finding that (1) Heena Hotel breached its contract with 30-32 and awarding compensatory damages of \$1,084,838.26; (2) that neither Heena Hotel nor Patel made a material misrepresentation to 30-32 to support a fraud claim; and (3) that 30-32 and Heena did not have an agreement pursuant to which 30-32 agreed to pay late fees under a Modification Agreement as would be necessary to support the breach of contract counterclaim (NYSCEF 85 [Verdict Sheet]). Both sides now move for post-trial relief.

DISCUSSION

CPLR 4401 provides:

Any party may move for judgment with respect to a cause of action or issue upon the ground that the moving party is entitled to judgment as a matter of law, after the close of the evidence presented by an opposing party with respect to such cause of action or issue, or at any time on the basis of admissions. Grounds for the motion shall be specified. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties.

In assessing a motion under CPLR 4401, the Court must determine “whether, on the evidence presented, there is no rational process by which the trier of fact could base a finding in favor of the non-moving party” (Dillon, Practice Commentaries C4401:4 [2021][collecting case]).

CPLR 4404(a) provides:

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 is deemed reasonable by the court.

Both Plaintiffs and Defendants argue that the jury got it wrong and that their side should prevail. Plaintiff argues that “the Jury appears to have been so laser focused on the issue of breach of contract that they apparently overlooked the very specific testimony and evidence provided at trial that clearly established [fraud]” (Plaintiff’s Moving Memorandum at 9 [NYSCEF 775]). Defendants first argue that because “Plaintiffs failed to present an expert accountant or even an accounting at trial” and because 30-32 “presented a misleading argument concerning the parties’ respective capital accounts that should not have been permitted” that Plaintiffs failed to establish damages [NYSCEF 797 at 1-2 [Defendant’s Moving Memorandum]]. Defendants also argue, in the alternative that the damages award should be lowered and, in the additional alternative, that judgment should be granted in favor of Heena on its breach of contract counterclaim (*Id.*).

The parties generally agree on the standard to be applied and disagree on what the result should be. In sum, “the critical inquiry is whether the verdict rested on a fair interpretation of the evidence” and “great deference” is provided to a jury “which has the opportunity to see and hear the witnesses” requiring the court to consider “the facts. . . in a light most favorable to the nonmovant” (*KBL, LLP v Community Counseling & Mediation Services*, 123 AD3d 488, 489 [1st Dept 2014][collecting cases, citations omitted]).

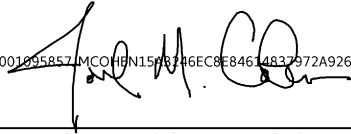
Based on the Court’s review of the record and close observation of the proceedings at trial, neither side has met the high standard to warrant departure from the unanimous jury verdict (*Niewieroski v Natl. Cleaning Contractors*, 126 AD2d 424 [1st Dept 1987] [reinstating jury verdict]).

* * * *

Accordingly, it is

ORDERED that the motions are **DENIED**.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

10/1/2022
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: