Krohn v Schultz Ford Lincoln, Inc.
2022 NY Slip Op 35027(U)
September 15, 2022
Supreme Court, Rockland County
Docket Number: Index No. 030812/2017
Judge: Thomas P. Zugibe
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SUPREME COURT OF THE STATE OF NEW YORK
ROCKLAND COUNTY
--X
CHANOCH KROHN,

Index: 030812/2017
Motion Sequence 3

Plaintiff,

-against-

DECISION & ORDER

SCHULTZ FORD LINCOLN, INC. a/k/a SCHULTZ FORD, LINCOLN MERCURY, INC. a/k/a SCHULTZ FORD, INC. and SCHULTZ FORD W HAVERSTRAW, INC.,

Defendants.
--X
Zugibe, J.

Upon consideration of all papers related to motion sequence three (designated by NYSCEF as documents numbered 44 through 55), the Plaintiff's motion to set aside the verdict pursuant to N.Y. Civ. Prac. L&R ("CPLR") §§ 4401 and 4404 is granted, as set forth more fully, *infra*.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The jury trial of this matter commenced on May 3, 2022 and concluded on May 5, 2022. The undersigned presided over the trial. The trial was bifurcated, so this portion of the trial only addressed issues of liability, and not damages. Over the course of the trial, jurors heard testimony from the Plaintiff, Chanoch Krohn, as well as from expert witnesses Victor Serby and Anthony Racioppo, and three employees of Defendant Schultz Ford.

Plaintiff testified that on May 25, 2014, while traveling from his home in Rockland County to Queens, New York, on his way to work in his used Ford Econoline E-250 Van (the "vehicle") which he had purchased approximately three months prior, he was involved in a

single vehicle accident. NYSCEF Doc. 47 (Trial Transcript), p.196: 6-16. Plaintiff testified that he was coming off of the ramp of the Whitestone Bridge, in order to merge onto the Van Wyck Expressway headed southbound at the speed of about 50 miles per hour when he heard a noise he described as a "metal clank" from underneath the vehicle. *Id.* at 206:16-24. After hearing the sound, Plaintiff testified that the vehicle began to veer to the right, and was not responding to his efforts to steer. *Id.* He testified that he attempted to apply the brake. However he was unable to do so before the vehicle collided with a concrete barrier on the right side of the highway. *Id.* at 206-207. The vehicle did not automatically stop when it hit the barrier, and instead, as per the Plaintiff, continued to move forward for about 50-75 feet while continuously hitting the concrete barrier before coming to a stop. *Id.* at 207:22 – 219:9. Photographs of the vehicle after the collision were admitted into evidence as trial exhibits. NYSCEF Doc. 48.

A few days prior to purchasing this vehicle, Plaintiff testified that he had it serviced and inspected at Schultz Ford to ensure it was in a safe and good working condition before buying it. NYSCEF Doc. 47, 196:13-197:10. Plaintiff testified that he specifically requested Schultz Ford to address the vehicle's steering, and that based on the recommendations of their employees, he authorized them to replace the entire gearbox steering mechanism in the vehicle. *Id.* at 197:20-198:3. Plaintiff produced evidence that Schultz Ford did in fact perform the repairs and replace the gearbox with either a remanufactured or refurbished gearbox. NYSCEF Doc. 48.

Following the collision, the vehicle was transported to Nanuet Collision Center. On September 23, 2014, Plaintiff's expert engineer, Victor Serby, performed an independent inspection of the vehicle to determine what had occurred. Mr. Serby testified that he conducted the inspection before any post-collision repairs were made to the vehicle. NYSCEF Doc. 47, 244:18-24 – 245:7; and 272:21-273:9. The inspection was documented by video and with photos,

which were admitted into evidence at trial. NYSCEF Doc. 48. Mr. Serby testified that following the inspection, he concluded that the accident occurred because the pitman arm became detached from the steering box because it was never properly torqued onto the vehicle with the specified 200 foot pounds of pressure, as it should have been when the gearbox steering mechanism was replaced. NYSCEF Doc. 47, 257:4-13.

Plaintiff also proffered the testimony of Anthony Racioppo, a forensic accident reconstructionist. Mr. Racioppo testified that following his review of the evidence and based on his expertise and experience that the pitman arm became detached from the steering arm because it was only tightened with a wrench, and was not torqued. *Id.* at 290: 8-25 through 291:1-20. Though Defendants cross examined each of Plaintiff's expert witnesses, Defendants produced no expert of their own.

The three employees from Shultz Ford who testified were the three individuals who either had performed work on the vehicle, or who had interacted with Plaintiff at the time he brought the vehicle in for service. The employees had no independent recollection of working on the subject vehicle or interacting with Plaintiff, and thus their testimony was predicated on a review of the records and what their employer's typical and customary practices would be in certain scenarios. Of note, two of these witnesses, Billy Tang and Gary Blauvelt, both testified that failing to apply the requisite about of torque pressure when installing a pitman arm could result in its detachment and present a danger. *Id.* at 75: 5-22, 182:3-12. Further, none of these three witnesses was able to give an explanation for the detachment of the pitman arm in the absence of some negligence on the part of the individual or individuals who replaced the gearbox steering mechanism.

At the conclusion of the trial, the verdict sheet was agreed upon by all counsel. The Verdict Sheet posed two questions, the first being "[w]ere the defendants negligent?" If no, the jurors were directed to proceed no further. If so, the jurors were directed to proceed to question two, which asked if the negligence was "a substantial factor in causing plaintiff's accident." NYSCEF Doc. 50.

After agreement as to the above referenced verdict sheet, each party made an application at that time for a directed verdict. The Court denied Defendants' motion outright but reserved decision on Plaintiff's motion. Deliberations then commenced. After a brief period of deliberation, the jury submitted a note, which stated the following: "[t]he second question presumes there was an accident and we do not have any evidence of an accident. Are we to assume there was an accident? Or is that part of our deliberation" (NYSCEF Doc. 42).

In response to this question, the undersigned provided the following instruction:

> Let me first tell you it's your recollection of the testimony that controls. If you don't recall any particular testimony, you have the right to have it read back to you by the stenographer if you have any specific areas that you wat to have your recollection refreshed.
>
> But let me just remind you of a couple of things. I will remind you that the plaintiff testified that while proceeding on the Van Wyck, an accident occurred. He testified that while travelling at approximately 50 miles an hour, he suddenly heard a metallic noise and lost his steering. He testified that the van suddenly veered to the right and struck a concrete guardrail.
>
> If you believe that testimony, then you could reasonably conclude that there was an accident. If you don't believe that testimony, you can conclude that there is no accident. That's your determination.
>
> So you have heard the testimony, and you are to consider what weight, if any, to give to that.

NYSCEF Doc. 47, p. 359:16- 360:8.

After some additional time deliberating, the jury returned a verdict sheet. NYSCEF Doc. 50. The verdict sheet indicated the jury unanimously found the Defendants were negligent, and that five of the six jurors did not believe this negligence was a substantial factor in causing the plaintiff's accident. *Id.* Counsel for Plaintiff renewed the application for a directed verdict, and the Court reserved decision, and set a briefing schedule.

LEGAL ANALYSIS

It is the jury's province to assess credibility. "In reviewing the record to ascertain whether a verdict was based on a fair interpretation of the evidence, great deference must be given to the fact-finding function of the jury, as it was in the foremost position to assess witness credibility" *Moccia v.* Chi, 18 A.D.3d 631, 632, 795 N.Y.S.2d 655, 656 (2d Dept. 2005). "Issues of credibility are for the jury, which had the opportunity to observe the witnesses, and the jury's resolution of credibility issues is entitled to deference". *Louis Puccio Devs., Inc. v. Dean*, 18 A.D.3d 826, 827, 796 N.Y.S.2d 630, 631 (2d Dept. 2005). Furthermore, there is a presumption the jury took a reasonable view of the evidence. This has long been case law. "It was for the jury to pass upon the credibility of the witnesses and plaintiff wife's alleged contributory negligence" *Zaino v. Frutkin*, 249 A.D. 628, 628, 290 N.Y.S. 907, 908 (2d Dept. 1936). However, there are some instances of jury activity which, upon review, require Court intervention. This Court determines that this is one of those instances.

Standard of Review

In the present case, Plaintiff asks the Court to set aside the verdict and direct judgment for Plaintiff as a matter of law. Alternatively, should the Court not direct judgment in favor of Plaintiff, the Court is asked to order a new trial based on the jury's inconsistent conclusions and issues of juror confusion. Defendant opposes this motion in its entirety.

Whether the jury verdict is against the weight of the evidence is a discretionary and factual determination that must be distinguished from whether the jury verdict is, as a matter of law, supported by sufficient evidence. *Nicastro v. Park*, 113A.D.2d 129, 132, 495 N.Y.S.2d 184 (2d Dept. 1985). Though these two inquiries may seem related and only a matter of semantics, they involve very different standards and could lead to very different results.

To sustain a determination that a jury verdict is not supported by the evidence, as a matter of law, the Court must "conclude that there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [individuals] to the conclusion reached by the jury on the basis of the evidence presented at trial." *Cohen v. Hallmark Cards, Inc.*, 45 N.Y.2d 493, 499, 382 N.E.2d 1145 (1978); *see also*, *Piro v. Demeglio*, 150 A.D.3d 907 (2d Dept. 2017); *Rumford v. Singh*, 130 A.D.3d 1002 (2d Dept. 2015); *Rykowski v. Automatic Data Press Mid-Atl., Inc.*, 170 A.D.2d 592, 592, 566 N.Y.S.2d 872 (2d Dept. 1991); *Frank v. Fisher*, 142 A.D.2d 665, 665, 530 N.Y.S.2d 597, 598 (2d Dept. 1988). This is a harsh test indeed, as such a finding leads to a directed verdict terminating the action without resubmitting the case to a jury. *Nicastro*, *supra,* at 132. Setting aside the verdict as against the weight of the evidence, however, is less stringent of a test requiring a discretionary balancing of many factors, and results only in a new trial. *Id.* at 133.

This Court, after reviewing both standards and the motion papers indicated above, hereby determines that there is "no valid line of reasoning and permissible inferences which could possibly lead rational [individuals] to the conclusion" (*Cohen*, *supra*) that was reached by this jury.

Being that the jurors unanimously determined the defendants were negligent, the issue turns to whether their negligence was a substantial factor in causing the accident of the Plaintiff.

Five of the six jurors determined that it was not. However, the Court determines that such a finding was against the weight of the evidence presented at trial. In certain cases such as this one, "the issues of negligence and proximate cause [may be] inextricably interwoven, such that the jury's finding that the defendant was negligent, but that its negligence was not a substantial factor in causing the accident" would be inherently contrary to the weight of the evidence that was presented. *Das v. Costco Wholesale Corp.*, 98 A.D.3d 712, 713, 950 N.Y.S.2d 396 (2d Dept. 2012).

In the absence of any other theories of liability within the record, it is simply not possible to conclude negligence in repairing car steering was not a substantial factor in causing the accident under the circumstances that were testified to at trial. In fact, although the Court recognizes that it is the Plaintiff who bears the burden of proof, the Defendants offered no evidence in response to the Plaintiff's case. Though that fact alone is not dispositive of this application, the Court notes that the jury's resolution of this issue is at total variance with the testimony and evidence presented, which was generally uncontroverted.

This should be distinguished from a case where conflicting evidence was presented, and the jury made the decision to find one side more credible than the other ((*c.f. Amachee v. Mohammed*, 57 A.D.3d 812, 869 N.Y.S.2d 608 (2d Dept. 2008) (in a case with adequate evidence to support either of two competing versions of an accident, setting aside a verdict and entering judgment in favor of the defendant would not be warranted)).

This Court has never used its discretion to set aside a jury verdict, and certainly does not take this decision lightly. However, this particular verdict was truly perplexing in light of the evidence presented, and even led the Court to wonder if the jury was listening to the same testimony as the undersigned.

CONCLUSION

Based on the foregoing, the Court grants Plaintiff's motion to set aside the verdict as against the weight of the evidence.

Now, therefore, it is:

ORDERED, judgment be entered on the issue of liability in favor of Plaintiff; and it is further

ORDERED, that the parties are to appear for a virtual conference before the undersigned on ***Tuesday, October 11, 2022 at 11:00 a.m.*** to discuss scheduling of further proceedings in this matter including the scheduling of a trial on the issue of damages.

Dated: September 15, 2022
New City, New York

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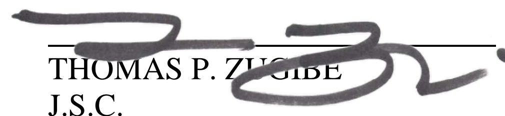

THOMAS P. ZUGIBE
J.S.C.