Chiloyan v Chiloyan
2022 NY Slip Op 35045(U)
March 13, 2022
Supreme Court, Richmond County
Docket Number: Index No. 150991/2014
Judge: Orlando Marrazzo, Jr.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
VANIK CHILOYAN,

Plaintiff(s),

-against-

EDUARD CHILOYAN.

Defendant(s)

DECISION/ORDER

ISA PART 26

HON. ORLANDO MARRAZZO, JR.

Index No.: 150991/2014
Motion No 6

The following numbered 1 to 3 were fully submitted on 2nd day of March 2023

Papers Numbered

Plaintiff's Motion to Set Aside the Verdict, with Supporting Papers and Exhibits, Dated, December 12, 2022, ... 1

Affirmation in Opposition, With Supporting Papers and Exhibits, Dated, February 22, 2023, ... 2

Reply, Dated, March 1, 2023, ... 3

Plaintiff motion seeking to set aside the verdict as set forth below is denied in its entirety. The verdict is not contrary to the weight of the evidence, as the jury could – and did - reasonably believe that plaintiff was not wearing a seatbelt and was entitled to disbelieve plaintiff's testimony to the contrary. Further, there is no indication that substantial justice has not been done, and the verdict was not affected by any of the alleged trial errors.

Here, plaintiff, Vanik Chiloyan, allegedly sustained injuries as a result of a motor vehicle accident that occurred on September 16, 2012, when the van he was operating, which was owned by his son, defendant Eduard Chiloyan, collided with a vehicle operated by Imran Ahmed. Plaintiff's sole theory of liability in this case is that defendant was negligent in failing to maintain the driver's seatbelt in the van, and that such failure was a substantial factor in causing plaintiff to be ejected from the van. A jury trial was held on the issue of liability, and the jury returned a verdict in favor of defendant, finding that his failure to maintain the seatbelt was not a substantial factor in causing plaintiff to be ejected from the van.

It is well settled that under CPLR 4404(a) provides, in pertinent part, that after a jury trial, "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, [or] in the interest of justice…."

Here the court finds that the verdict rests on legally sufficient evidence and the existence of factual issues precludes granting plaintiff judgment as a matter of law on the issue of liability

A motion to set aside a jury verdict and direct judgment as a matter of law pursuant to CPLR 4404(a) may be granted "only when the trial court determines

that, upon the evidence presented, there is no valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusion reached by the jury upon the evidence presented at trial, and no rational process by which the jury could find in favor of the nonmoving party" (Osorio v NY City Health & Hosps. Corp., ___AD3d___, 2022 NY Slip Op 07072, *2 [Dec. 14, 2022], quoting Yacv County of Suffolk, 205 AD3d 764, 765 [2d Dept 2022]).

"In considering such a motion, the facts must be considered in a light most favorable to the nonmovant" (Yac, 205 AD3d at 767 [internal quotation marks omitted]; Sikorjak v City of NY, 168 AD3d 778, 780-781 [2d Dept 2019]), and the court must afford the nonmovant "every inference which may properly be drawn from the facts presented" (Blair v Coleman, 211 AD3d 671 [2d Dept 2022]; Shehata v Koruthu, 201 AD3d 761, 763 [2d Dept 2022]). "The existence of a factual issue justifies the granting of a new trial rather than a directed verdict" (Yac, 205 AD3d at 767 [alterations and internal quotation marks omitted]; see Cohen v Hallmark Cards, 45 NY2d 493, 499 [1978]).

Here, there was legally sufficient evidence to support the verdict that defendant's failure to maintain the driver's seatbelt was not a substantial factor in causing plaintiff's ejectment from the van, and the existence of factual issues precludes granting plaintiff judgment as a matter of law on the issue of liability.

Contrary to plaintiff's contention, plaintiff's testimony that he was wearing his seatbelt is, in fact, disputed, and a rational jury could conclude from, inter alia, the documentary evidence, i.e., the statement that Officer Jose Diaz took from plaintiff denying any mechanical problems with the van, and photographic evidence, that plaintiff was not wearing his seatbelt and thus, defendant's failure to maintain the seatbelt was not a proximate cause of plaintiff being ejected from the van. Although plaintiff seemingly believes that his testimony must be believed, issues of credibility are for the jury (Williams v Illinois Tool Works, Inc., 208 AD3d 1206, 1207 [2d Dept 2022]), which "may believe or disbelieve the testimony of a witness or believe portions of the testimony and disbelieve others" (Young Mee Oh v Koon, 140 AD3d 861, 862-863 [2d Dept 2016], quoting Scalogna v Osipov, 117 AD3d 934, 935 [2d Dept 2014]).

Thus, viewing the evidence in the light most favorable to defendant, there was a valid line of reasoning by which the jury could find that defendant's failure to maintain the driver's seatbelt was not a substantial factor in causing plaintiff's ejectment from the van. Plaintiff's contention that the points sought to be made by the defense by their questions to witnesses and during their summation "are legally insufficient" and is meritless. Plaintiff's counsel did not object to any portion of the defense's summation, and it is beyond cavil that an attorney's questions and arguments during summation are not evidence and thus, do not affect the legal

sufficiency of a jury's verdict. As the evidence was legally sufficient to support the jury's verdict, plaintiff's motion to set aside the jury verdict and direct judgment be entered in his favor on the issue of liability should be denied.

Further the court maintains that the verdict was not contrary to the weight of the evidence as the jury's determination that defendant's negligence was not a proximate cause of plaintiff's ejectment from the van is supported by a fair interpretation of the evidence

"A jury verdict against a party may be set aside as contrary to the weight of the evidence only if 'the evidence so preponderated in favor of [the plaintiff] that the verdict could not have been reached on any fair interpretation of the evidence'" (Avila v VVFJ Realty, LLC, ___AD3d___, 2023 NY Slip Op 00199, *1 [Jan. 18, 2023], quoting Lolik v Big V Supermarkets, 86 NY2d 744, 746 [1995] [alterations and internal quotation marks omitted]). "Proof of a defendant's negligence does not compel a finding that such negligence was a proximate cause of the accident" (Avila, ___AD3d___, 2023 NY Slip Op 00199, *1-2, quoting Dellamonica v Carvel Corp., 1 AD3d 311, 311 [2d Dept 2003]).

"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 against 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" (Avila,

___AD3d___, 2023 NY Slip Op 00199, *2, quoting Garrett v Manaser, 8 AD3d 616, 617 [2d Dept 2004]).

Here, the issues of negligence and proximate cause are not so inextricably interwoven as to render the verdict inconsistent and against the weight of the evidence. The jury could have reasonably concluded from the evidence, inter alia, that: (i) the driver's seatbelt was not operable and thus, defendant was negligent in failing to maintain it; and (ii) plaintiff was not wearing the seatbelt and thus, defendant's negligence was not a substantial factor in causing plaintiff to be ejected from the van. The only evidence that plaintiff was wearing his seatbelt was his own testimony, and "[i]t is for the jury to make determinations as to the credibility of witnesses (Osorio, ___AD3d___, 2022 NY Slip Op 07072, *2 quoting Anarumo v Herzog, 201 AD3d 778, 779 [2d Dept 2022].) "[G]reat deference in this regard is accorded to the jury, which had the opportunity to see and hear the witnesses" (id.). The jury was entitled to disbelief plaintiff's self-serving testimony, particularly given the photographic evidence depicting, inter alia, a fully intact seatbelt at the driver's seat, the statement Diaz took from plaintiff denying any mechanical problems with the van. Thus, the jury's verdict was not contrary to the weight of the evidence and should not be disturbed.

The court now addresses plaintiff's remaining arguments seek to set aside the verdict "in the interest of justice" (CPLR 4404 [a]). "A motion pursuant to CPLR

4404(a) to set aside a verdict and for a new trial in the interest of justice encompasses errors in the trial court's rulings on the admissibility of evidence, mistakes in the charge, misconduct, newly discovered evidence, and surprise" (Chihuahua v Birchwood Estates, LLC, 203 AD3d 1015, 1017 [2d Dept 2022] [internal quotation marks and citations omitted]; see Bhim v Platz, 207 AD3d 511, 513 [2d Dept 2022]). "[T]he discretionary power to set aside a jury verdict and order a new trial must be exercised 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" (Nicastro v Park, 113 AD2d 129, 133 [2d Dept 1985]; see also Desinor v Nassau County, 206 AD3d 618, 619 [2d Dept 2022]).

In considering whether to exercise its discretionary power, a court "must must decide whether substantial justice has been done [and] whether it is likely that the verdict has been affected [by trial errors,] and must look to its own common sense, experience and sense of fairness rather than to precedents in arriving at a decision" (Kleiber v Fichtel, 172 AD3d 1048, 1050 [2d Dept 2019] [internal quotation marks and alterations omitted], lv dismissed 34 NY3d 962 [2019]).

Here the court notes that there is no evidence of substantial jury confusion apparent on the record While a court has discretion under CPLR 4404 (a) to set aside a verdict and grant a new trial "where the verdict is clearly the product of substantial confusion among the jurors" (Guaman v One Whitehall, L.P., 210 AD3d

1060, 1060-1061 [2d Dept 2022]; Young Mee Oh, 140 AD3d at 862), such discretion "should be exercised cautiously" (Wylder v Viccari, 138 AD2d 482, 484 [2d Dept 1988]; Wilson v New York Racing Assn., 129 AD2d 577, 577 [2d Dept 1987]). "The confusion must be apparent from the trial record" (Guaman, 210 AD3d at 1061, quoting Wright v City of New York, 168 AD3d 1025, 1026 [2d Dept 2019]). Here, there is no proof of the existence of substantial confusion before the jury.

Based on the complete record before this court, the court denies plaintiff's motion to set aside the jury verdict and the jury verdict in this matter stands.

Dated: March 13, 2022

Orlando Marrazzo, Jr.,
Justice, Supreme Court