

**Pini v Engelhardt**

2024 NY Slip Op 34871(U)

July 31, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 612274/2017

Judge: Carmen Victoria St. George

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**SUPREME COURT – STATE OF NEW YORK  
TRIAL TERM, PART 56, SUFFOLK COUNTY**

**PRESENT:**

*Hon. Carmen Victoria St. George*  
**Justice of the Supreme Court**

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**JEANNE PINI,**

**Index No.  
612274/2017**

**Motion Seq:  
001 MD  
Decision/Order**

**Plaintiff,**

**-against-**

**PETER ENGELHARDT,**

**Defendant.**

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The following electronically filed papers with exhibits were read upon this motion:

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This negligence action was tried before this Court commencing on March 20, 2024, and ending on March 21, 2024, with the jury’s verdict on the issue of liability. The incident giving rise to this action occurred on December 25, 2016, when the plaintiff slipped down the front steps of defendant’s house. The jury returned its verdict on March 21, 2024, finding that both the defendant and the plaintiff were negligent, and that each of them was a substantial factor in causing the subject accident. The jury apportioned 15% of the liability to the defendant and 85% of the liability to the plaintiff.

The plaintiff now moves this Court pursuant to CPLR § 4404 (a) for an Order granting plaintiff judgment notwithstanding the verdict, or alternately, for an Order setting aside the jury’s verdict as against the weight of the evidence on the issue of liability, and granting plaintiff a new trial, or for an Order granting plaintiff a new trial in the interest of justice. Defendant opposes the requested relief in all respects.

Contrary to plaintiff's contention, "boggles the mind"<sup>1</sup> is not the standard for any analysis, whether it be for determining whether to grant judgment notwithstanding the verdict as a matter of law, or as against the weight of the evidence, or in the interest of justice.

"The Court of Appeals has recognized that the setting aside of a jury verdict as a matter of law and the setting aside of a jury verdict as contrary to the weight of the evidence involve two inquiries and two different standards" (*Ramirez v. Mezzacappa*, 121 AD3d 770, 772 [2d Dept 2014]). "[T]he question whether a verdict is against the weight of the evidence involves what is in large part a discretionary balancing of many factors. For a court to conclude as a matter of law that a jury verdict is not supported by sufficient evidence, however, requires a harsher and more basic assessment of the jury verdict" (internal citation omitted) (*Cohen v. Hallmark Cards, Inc.*, 45 NY2d 493, 499 [1978]).

"For a court to conclude as a matter of law that a jury verdict is not supported by sufficient evidence, it must find that there is 'simply no valid line of reasoning and permissible inferences which could possibly lead . . . to the conclusion reached by the jury on the basis of the evidence presented at trial'" (*Ramirez, supra* at 772, quoting *Cohen, supra* at 499; see also *Brenan v. Gormley*, 181 AD3d 552, 553 [2d Dept 2020]).

"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" (*Scalogna v. Osipov*, 117 AD3d 934, 935 [2d Dept 2014]). "When a verdict can be reconciled with a reasonable view of the evidence, the successful party is entitled to the presumption that the jury adopted that view" (*Handwerker v. Dominick L. Cervi, Inc.*, 57 A.D.3d 615, 616 [2d Dept 2008]). In considering such a motion, "the trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant" (*Szczerbiak v. Pilat*, 90 NY2d 553, 556 [1997]).

"Thus, rationality is the touchstone for legal sufficiency, while fair interpretation is the criterion for weight of the evidence (*Ramirez, supra* at 772). Where a court finds that a jury verdict is not supported by sufficient evidence, that finding leads to a directed verdict, whereas when a court finds that a jury verdict is against the weight of the evidence, a new trial is granted (*Nicastro v. Park*, 113 AD2d 129, 132-133 [2d Dept 1985]).

Regarding whether a jury verdict is against the weight of the evidence, "a trial court should exercise considerable caution in utilizing its discretionary power to set aside a jury verdict and grant a new trial" (*Murphy v. Estate of Vece*, 173 AD2d 445, 445 [2d Dept 1991]). "[T]he fact-finding function of the jury and its determination of issues of credibility are accorded great deference" (*O'Brien v. Barretta*, 1 AD3d 330, 331 [2d Dept 2003]). Moreover, "comparative negligence is a jury question in all but the clearest cases" (*O'Neill v. Mildac Properties*, 162 AD2d 441, 443 [2d Dept 1990]; see also *O'Brien, supra* at 332-332 [finding that plaintiff was 60% liable and defendant was 40% liable consistent with fair interpretation of the evidence]; *Patti v. Fenimore*, 181AD2d 869 [2d Dept 1992] [jury reasonably concluded that defendant driver was free from fault and that accident was due to plaintiff driver's conduct]).

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<sup>1</sup> Plaintiff's Affirmation in Support, ¶ 12.

“A new trial should be granted in the interests of justice only if there is evidence that substantial justice has not been done, as would occur, for example, where the trial court erred in ruling on the admissibility of evidence, there is newly-discovered evidence, or there has been misconduct on the part of the attorneys or jurors” (internal citation omitted) (*Gomez v. Park Donuts, Inc.*, 249 AD2d 266, 267 [2d Dept 1998]).

At the trial of this matter, the jury heard that there was no snow or ice on the ground, and that it was not raining when the EMS team responded to defendant’s house to attend to defendant’s wife. The jury also heard, without dispute, that there were no puddles on the front steps of the house where the plaintiff ultimately slipped and fell. Based upon the trial testimony from the plaintiff herself and EMT Fortner, when the plaintiff exited defendant’s house to ready the gurney, plaintiff was carrying a small oxygen tank in one hand and a clipboard in the other hand, and plaintiff acknowledged that she did not use the handrails attached to the outside stairs as she descended.

EMT Fortner testified that he was the first one on the steps leading to defendant’s house, that his foot slipped, and he turned to the other EMT and the plaintiff “and said be careful, steps are wet.” Plaintiff acknowledged at trial that she heard EMT Fortner warn of the wet steps. EMT Fortner identified four pictures of the front steps that he stated fairly and accurately portrayed the condition of the steps on the date of the incident. Specifically, he recalled that there was a “greenish” “mossy, mildew” located “mainly around the edges of the step.” The photographs were admitted into evidence at trial and are submitted upon this motion. Those photographs of the steps appear to corroborate EMT Fortner’s testimony that the green substance is mostly concentrated on the edges of the steps, not in the center of the treads. In contrast, when the plaintiff was shown the photographs of the steps, she testified that the steps were in worse condition on the date she fell than the condition depicted in the photographs.

The defendant testified that he had never received any complaints about a green substance prior to the plaintiff’s incident, and that he had not received any violations from any municipality concerning his front steps, although he acknowledged that there was a greenish substance on the handrails.

There was additional testimony from EMT Fortner and the defendant that the plaintiff exited the defendant’s house at “an aggressive pace, a fast pace,” and/or that she was “walking very fast” immediately before she fell. At trial, the plaintiff testified that she was looking straight ahead when she exited the defendant’s house, but that she was also scanning when she walked down the steps. Plaintiff was confronted with her deposition testimony on cross-examination wherein she testified that she simply looked straight ahead, without any mention of scanning as she descended the steps. The plaintiff testified at trial that she slipped on a “greenish something,” and that she “believe[ed] she slipped on the green algae on the steps;” however, she was again confronted with her deposition testimony that she told other people that she slipped on moss, wet leaves, and debris on the step. Notably, EMT Fortner testified that there was no “debris” on the steps.

The jury could have discredited a portion of plaintiff's testimony about what exactly caused her to slip and fall, since they had the opportunity to see and hear plaintiff in addition to the other witnesses presented at trial; plus, the jury was provided with the undisputed evidence that plaintiff was warned about the wet steps shortly before she fell, that she was carrying an oxygen tank and a clipboard and did not use the handrails as she descended the wet steps. Accordingly, the jury's assessment of plaintiff's comparative fault is in accord with a fair interpretation of the evidence.

Likewise, the plaintiff is not entitled to a judgment in her favor notwithstanding the jury's verdict assigning 85% of the liability to her and 15% to the defendant. The jury determined that both the plaintiff and the defendant were negligent in their respective conduct, and that each was a substantial factor in causing the accident. Insofar as the defendant, the evidence supports the jury's determination that he was negligent in maintaining the steps, but the evidence also supports the comparative negligence of the plaintiff in disregarding the warning given by her fellow EMT, descending the stairs carrying objects in each hand, and failing to use the handrails. There can be more than one proximate cause of an accident, and generally, it is for the trier of fact to determine the issue of proximate cause (*see Vuksanaj v. Abbott*, 159 AD3d 1031 [2d Dept 2018]; *Cox v. Nunez*, 23 AD3d 427 [2d Dept 2005]); therefore, based upon the evidence adduced at this trial, it cannot be said that there was simply no valid line of reasoning and permissible inferences that could possibly have led to the conclusion reached by the jury (*Cohen, supra* at 499).

Finally, the plaintiff offers no argument in support of her request for a new trial in the interest of justice, and the record is devoid of any suggestion that substantial justice was not done.

Accordingly, the plaintiff's motion is denied in all respects and the jury's verdict stands.

The foregoing constitutes the Decision and Order of this Court.

Dated: July 31, 2024  
Hauppauge, NY

  
CARMEN VICTORIA ST. GEORGE, J.S.C.

FINAL DISPOSITION [ X ] NON-FINAL DISPOSITION [ ]