

**Castillo-Sayre v Citarella Operating LLC**

2025 NY Slip Op 34961(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 160716/2015

Judge: Richard G. Latin

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. RICHARD G. LATIN PART 46M**

*Justice*

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NANCY CASTILLO-SAYRE, NICOLAS SAYRE

Plaintiff,

- v -

CITARELLA OPERATING LLC,

Defendant.

-----X

INDEX NO. 160716/2015

MOTION DATE 06/23/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188

were read on this motion to/for SET ASIDE VERDICT.

Plaintiff Nancy Castillo-Sayre’s motion pursuant to CPLR § 4404(a) and CPLR § 5015(a) seeking to set aside the jury’s verdict and for the entry of judgment in its favor (NYSCEF # 167) is determined as follows:

**Background**

Plaintiff alleges that she slipped and fell on “fish guts” on the West 75th Street sidewalk adjacent to the Citarella store located at 2135 Broadway, New York, New York (NYSCEF # 168 at 1). Plaintiff further alleges that she sustained serious injuries as a result of the incident (*see id.*). A jury trial was held on April 7, 2025. Following trial, the jury found defendant Citarella 100% at fault for the accident and awarded plaintiff damages in the total sum of \$6,435,000 for past and future pain and suffering, as well as past medical expenses (*see id.* at 2).

Defendant Citarella Operating LLC (“Citarella”) now moves to set aside the jury’s verdict and for entry of judgment in its favor (NYSCEF # 167). Citarella contends that the jury’s liability determination was unsupported by legally sufficient evidence (NYSCEF # 168 at 2). Specifically,

Citarella argues that plaintiff failed to present credible evidence establishing that Citarella created the alleged dangerous condition or had actual or constructive notice of it (*see id.*). Citarella further asserts that plaintiff did not demonstrate that Citarella had constructive notice of a recurring condition that was routinely left unaddressed (*see id.*).

Citarella also seeks to set aside the jury's damages award, asserting that newly discovered evidence demonstrates that plaintiff and her daughter provided "false and misleading testimony" regarding plaintiff's post-accident physical limitations (*see id.*). In support, Citarella claims the existence of photographs on social media contradict plaintiff's testimony concerning the severity of her injuries (*see id.*). In addition, Citarella argues that the court made several "erroneous evidentiary rulings," including the admission of photographs that, according to Citarella, were not properly authenticated and did not depict the accident scene at any relevant time prior to plaintiff's alleged incident (*see id.*).

### Discussion

"A trial court may not set aside a jury's verdict simply because it disagrees with the result; absent an indication of substantial injustice, a litigant is entitled to the benefit of a favorable verdict" (*Mazariegos v New York City Tr. Auth.*, 230 AD2d 608, 609 [1st Dept 1996], citing *Brown v Taylor*, 221 AD2d 208, 209 [1st Dept 1995]). It is the jury's role to evaluate witness credibility and reconcile conflicting evidence, and a court may disturb the verdict as contrary to the weight of the evidence only where no fair interpretation of the evidence supports it (*see id.* at 610; *see Wiseberg v Douglas Elliman-Gibbons and Ives, Inc.*, 224 AD2d 361, 362 [1st Dept 1996]; *see also Vavosa v Stiles*, 220 AD2d 363, 365 [1st Dept 1995]). In other words, while great discretion and caution are entrusted with the trial court in deciding motions to set aside a jury's verdict, a court

must exercise due caution and restraint when exercising its power to disturb a jury's findings (*see Mazariegos*, 230 AD2d at 610).

### **Actual / Constructive Notice of Alleged Dangerous Condition**

Defendant's request to set aside the jury verdict as against the weight of the evidence, on the ground that the verdict was "unsupported by legally sufficient evidence," is denied (NYSCEF # 168 at 9). Defendant contends that

"plaintiff also fails to present any evidence how long the fish guts were on the sidewalk prior to the alleged accident or that the fish guts were visible and apparent on the sidewalk for a sufficient length of time prior to the accident to permit Citarella's employees to discover and remedy this condition" (*id.* at 11).

Defendant further argues that evidence was presented demonstrating that it customarily inspected the sidewalk and had porters hose down and clean the areas where plaintiff alleges she was injured (*id.* at 12). Defendant also asserts that there was no evidence of prior complaints to the store concerning a defective condition that would have placed it on actual or constructive notice (*see id.* at 13-16).

Nevertheless, it was not unreasonable for the jury to find defendant liable (*see id.* at 2). The jury determined that the proximate cause of plaintiff's accident was the fault of defendant Citarella, which it found to be 100% at fault (*see id.*). Accordingly, the verdict is supported by a fair interpretation of the evidence and will not be disturbed.

### **Evidentiary Rulings**

The purported newly discovered evidence consisting of photographs from social media is insufficient to warrant setting aside the jury's verdict on the basis of newly discovered evidence (NYSCEF # 168 at 16-18). The evidence offered by defendant in support of the motion would, at best, have served only to impeach or contradict evidence adduced at trial (*see People v Haddad*,

133 AD2d 124, 125 [2d Dept 1987], citing *People v Salemi*, 309 NY 208, 219 [1955] [stating “[w]hen this alleged newly-discovered evidence is viewed against the main record in light of the best inference rule, the most that can be said concerning it is that at best, it is cumulative or designed merely to impeach or contradict the former evidence”]). Here, photographs depicting plaintiff on vacation would serve solely to impeach plaintiff’s testimony.

Defendant argues, relying on *Prote*, that had such evidence been introduced at trial, it would have produced a different result (NYSCEF # 168 at 16-17). That reliance is misplaced. In *Prote*, the court granted the motion to set aside the jury verdict because the newly discovered evidence pertained to bribery and fraud (*see Prote Contr. Co., Inc. v Bd. of Educ. of the City of New York*, 230 AD2d 32, 39-40 [1st Dept 1997]). The *Prote* court expressly held that “the newly discovered evidence does more than merely impeach Demetriades’ credibility” and found clear evidence of fraud upon the court (*see id.* at 40).

Here, no such showing has been made. The photographs do not rise to the level of fraud, nor is there any basis to conclude that their admission would likely have produced a different result at trial (*see id.* at 40). It is undisputed that plaintiff sustained serious injuries, as established by independent medical records and hospital bills for treatment and surgery exceeding \$850,000, which were introduced at trial (NYSCEF # 180 at 16-17).

Thus, defendant’s challenge to the admissibility of photographs depicting the accident location likewise fails to provide a basis for setting aside the verdict or granting a new trial. As discussed above, such photographs “at best would have served only to impeach or contradict evidence adduced at trial” (*Haddad*, 133 AD2d at 125, citing *Salemi*, 309 NY at 219). Accordingly, defendant’s evidentiary arguments are unavailing.

**Conclusion**

WHEREFORE, it is hereby:

ORDERED that defendants' motion for an order to set aside the jury's verdict and for the entry of judgment in its favor is denied.

This constitutes the decision and order of the court.

12/22/2025  
DATE

  
RICHARD G. LATIN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE