

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21021
G/kmg

_____AD3d_____

Argued - October 17, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2007-07238

DECISION & ORDER

James Dannolfo, appellant,
v Gencor Industries, Inc., respondent.

(Index No. 20406/01)

Tracy & Stilwell, P.C., Staten Island, N.Y. (John J. Tracy of counsel), for appellant.

Biedermann, Reif, Hoenig & Ruff, P.C., New York, N.Y. (Leslie F. Ruff and Peter W. Beadle of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries based on strict products liability, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Starkey, J.), dated July 2, 2007, which, upon a jury verdict on the issue of liability, and upon the denial of his motion pursuant to CPLR 4404(a), among other things, to set aside the verdict as against the weight of the evidence and for a new trial, is in favor of the defendant and against him, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

Contrary to the plaintiff's contention, the jury verdict finding that the defendant's defective product and the defendant's negligence were not proximate causes of the plaintiff's injuries is supported by a fair interpretation of the evidence adduced at trial (*see Nicastro v Park*, 113 AD2d 129, 134). Accordingly, the Supreme Court properly denied that branch of the plaintiff's motion pursuant to CPLR 4404(a) which was to set aside the jury verdict as against the weight of the evidence and for a new trial (*see Jaffier v Wilson*, 54 AD3d 725; *Rivera v MTA Long Is. Bus*, 45

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AD3d 557, 558; *Abre v Sherman*, 36 AD3d 725, 726).

The plaintiff's remaining contentions are without merit.

MASTRO, J.P., RIVERA, COVELLO and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court