

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

D23557
C/hu

_____AD3d_____

Argued - May 15, 2009

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2008-02958

DECISION & ORDER

Jose Osvaldo Zhagui, respondent, v Frederick H.
Gilbo, et al., appellants.

(Index No. 39971/04)

Montfort, Healy, McGuire & Salley, Garden City, N.Y. (Donald S. Neumann, Jr., of counsel), for appellants.

Paul H. Maloney, P.C., New York, N.Y. (Paul H. Maloney IV of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Dabiri, J.), dated February 19, 2008, which granted the plaintiff's motion pursuant to CPLR 4404(a) to set aside a jury verdict in their favor on the issue of liability, and for a new trial.

ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion pursuant to CPLR 4404(a) to set aside the jury verdict in favor of the defendants and against the plaintiff on the issue of liability and for a new trial is denied.

A jury verdict should not be set aside as against the weight of the evidence unless the jury could not have reached the verdict by any fair interpretation of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744; *Nicastro v Park*, 113 AD2d 129). A jury finding that a party was negligent but that the negligence 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" (*Rubin v Pecoraro*, 141 AD2d

June 16, 2009

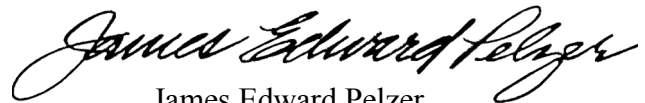
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525, 527; *see Jaffier v Wilson*, 54 AD3d 725). “Where the verdict can be reconciled with a reasonable view of the evidence, the successful party is entitled to the presumption that the jury adopted that view” (*Koopersmith v General Motors Corp.*, 63 AD2d 1013, 1014; *see Rubin v Pecoraro*, 141 AD2d at 526). Under the circumstances, the issues of negligence and proximate cause were not inextricably interwoven, and the jury determination that the defendant driver’s negligence was not a proximate cause of the accident was not against the weight of the evidence (*see Rubin v Pecoraro*, 141 AD2d 525).

MASTRO, J.P., FLORIO, ENG and LEVENTHAL, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court