

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

210

CA 09-01826

PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, AND GREEN, JJ.

LISA M. GROCHOWSKI, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

JASON P. FUDELLA, DEFENDANT-APPELLANT.

BOUVIER PARTNERSHIP, LLP, BUFFALO (NORMAN E.S. GREENE OF COUNSEL), FOR
DEFENDANT-APPELLANT.

CELLINO & BARNES, P.C., BUFFALO (GREGORY V. PAJAK OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Nelson H. Cosgrove, J.H.O.), entered May 1, 2009 in a personal injury action. The order granted plaintiff's motion to set aside the verdict and for a new trial.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries she sustained when her vehicle was rear-ended by a vehicle driven by defendant. Following a summary jury trial conducted pursuant to the parties' stipulation in accordance with "the Summary Jury Trial Rules of the Eighth Judicial District," the jury found in favor of defendant. Defendant appeals from an order granting plaintiff's motion to set aside the verdict as against the weight of the evidence and for a new trial. We reject defendant's contention that Supreme Court violated the terms of the stipulation in determining the motion. "A stipulation between parties is an independent contract subject to the principles of contract interpretation" (*Matter of Black v New York State & Local Employees' Retirement Sys.*, 30 AD3d 920, 920). Here, the parties stipulated that the issue of negligence would be submitted to the jury and that neither party would request the court to direct a verdict pursuant to CPLR 4401 on that issue. The stipulation is silent, however, with respect to motions to set aside the verdict as against the weight of the evidence pursuant to CPLR 4404, and thus the court properly concluded that the terms of the stipulation do not evince the intent of plaintiff to forego her right to move to set aside the verdict (see generally *White v Winter*, 28 AD3d 1148).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court