

ORDER OF THE HONORABLE WILLIAM B. REBOLINI, DATED AUGUST 4, 2014,
AND FILED AUGUST 20, 2014, APPEALED FROM, WITH
NOTICE OF ENTRY, DATED AUGUST 27, 20104 [4 - 7]

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Short Form Order

SUPREME COURT - STATE OF NEW YORK

L.A.S. PART 7 - SUFFOLK COUNTY

PRESENT:

WILLIAM B. REBOLINI
Justice

Adina Raso,

Plaintiff,

-against-

Sachin Jamdar, D.D.S. and
Suffolk Oral Surgery Associates, LLP,

Defendants.

Motion Sequence No.: 005; MOTD

Motion Date: 3/31/14

Submitted: 5/28/14

Index No.: 30497/2007

Attorney for Plaintiff:

Law Offices of Joel J. Ziegler, P.C.
199 East Main Street, Suite 2
Smithtown, NY 11787

Attorney for Defendants:

Cuomo LLC
9 East 38th Street
New York, NY 10016

Clerk of the Court

Upon the following papers numbered 1 to 15 read upon this application for an order pursuant to CPLR 4404: Notice of Motion and supporting papers, 1 - 9; Answering Affidavits and supporting papers, 10 - 13; Replying Affidavits and supporting papers, 14 - 15; it is

ORDERED that this motion by plaintiff, Adina Raso, is granted to the extent it seeks an order pursuant to CPLR 4404 setting aside the jury's award of zero dollars for future pain and suffering as against the weight of the evidence; and it is further

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ORDERED that this matter is remanded for a new trial solely as to such future damages unless, within thirty (30) days of service of a copy of this order with notice of entry, defendant stipulates to accept an increased award for future pain and suffering of \$120,000 and to the entry of a judgment in accordance therewith; and it is further

ORDERED that the attorneys for the respective parties shall appear before this Court for a conference on Wednesday, August 27, 2014 at 10 AM.

The jury found after trial that the defendant, Sachin Jamdar, D.D.S., departed from good and accepted standards of dental practice in his treatment of the plaintiff on April 14, 2005 during a wisdom tooth extraction on her lower left molar; and that the departure was a substantial factor in causing plaintiff injury. At the time of trial, plaintiff was 23 years of age. There was expert testimony at the time of trial that much of the pain suffered by plaintiff after the extraction was attributable to the extraction itself. The jury awarded plaintiff \$25,000 for past pain and suffering. There was also testimony that the plaintiff underwent a subsequent procedure to repair the lingual nerve, and that such surgery was successful. Plaintiff testified at trial, however, that the taste sensation on the left side of her tongue has been and continues to be distorted. She testified, for example, that she can not appreciate the full flavor of a banana, and that roast pork tastes metallic. She also testified that the left side of her tongue is still numb and that it is "not a hundred percent."

Defendant's expert witness, Dr. Allan J. Cucine, an oral and maxillofacial surgeon, testified at trial that he examined plaintiff on June 16, 2009, and found that she had "mild paresthesia of the left side of the tongue and mild alteration of taste on the left side of the tongue." For future pain and suffering, however, the jury awarded "0" dollars. Plaintiff now argues that in awarding zero dollars for future pain and suffering, the jury disregarded the undisputed evidence that plaintiff suffers from numbness and alteration of taste on the left side of her tongue, and that its award is inadequate and against the weight of the evidence. Defendant has opposed the application.

A jury verdict may not be set aside as being against the weight of the evidence unless the jury could not have reached the verdict on any fair interpretation of the evidence (*Abdelkader v Shahine*, 66 AD3d 615, 616, 889 NYS2d 594 [2d Dept 2009]). The jury made a finding that the defendant had deviated or departed from accepted standards of dental care, and that such departure was a proximate cause of the plaintiff's injury to the lingual nerve. The evidence at trial showed that the subsequent repair surgery resulted in a decrease or elimination of pain plus a significant return of sensation as well as improvement in taste sensation. Moreover, the plaintiff's testimony, together with the testimony of Dr. Cucine, established that the plaintiff continues to suffer an impairment, described by the expert as "mild", as a result of the nerve damage. Under the circumstances, the failure to award damages for future pain and suffering was against the weight of the evidence (*see Zito v City of New York*, 49 AD3d 872, 857 NYS2d 575 [2d Dept 2008]).

The evidence showed that plaintiff experienced significant improvement following repair surgery, that plaintiff has performed and recorded songs since the procedures, that she is not on any medication for the injuries claimed to have been sustained, that she is not undergoing continued

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medication for the injuries claimed to have been sustained, that she is not undergoing continued treatment for the injuries, and that she has an active life. Based on the evidence adduced at trial, the award for past pain and suffering was reached upon a fair interpretation of the evidence. Accordingly, it is the determination of this Court that the jury award for past pain and suffering was not inadequate or against the weight of the evidence, nor did it deviate materially from what would be reasonable compensation for plaintiff's past pain and suffering.

Dated: August 4, 2014


HON. WILLIAM B. REBOLINI, J.S.C.

_____ FINAL DISPOSITION ___ X ___ NON-FINAL DISPOSITION