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21 Misc.3d 1147(A), 880 N.Y.S.2d 222, 2008 WL 5264628 (N.Y.Sup.), 2008 N.Y. Slip Op. 52527(U)
(Table, Text in WESTLAW), Unreported Disposition
(Cite as: 21 Misc.3d 1147(A), 2008 WL 5264628 (N.Y.Sup.))

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Supreme Court, Kings County, New York.
Pedro ACOSTA, Plaintiff,

v.

The CITY OF NEW YORK, Scott Jenkins, "John Doe," "Richard Roe," and other names fictitious, true names unknown to the Plaintiff but believed to be members of The New York City Police Department, Defendant.

No. 23559/2000.

Dec. 18, 2008.

Roura & Melamed New York, for Plaintiff.

Michael A. Cardozo, Corporation Counsel, The City of New York, New York, Attorneys for Defendant.

JAMES G. STARKEY, J.

*1 Before the court is defendant's post trial motion in the above entitled matter. This motion seeks to set aside or reduce the jury verdict pursuant to CPLR § 4404 and CPLR § 5501 as against the weight of the credible evidence and excessive in amount. Plaintiff opposes this motion, and the parties appeared in Part 6 of this Court for oral argument on the motions on September 24, 2008, and decision was reserved.

THE EVIDENCE AND PROCEDURAL BACKGROUND

According to plaintiff Pedro Acosta, at approximately 11 o'clock P.M. on April 16, 1999, he was at his then residence located at 208 Hale Avenue, Brooklyn, New York, when he received a phone call from an unidentified male claiming to be his probation officer. This person advised him to come down and open the front door of the premises. Plaintiff was suspicious of this call, as his probation officer at the time was female. After a second call, plaintiff heard screams and knocks at the front door. He went downstairs from his second floor apartment and opened the interior door. He observed four males in plain clothes through the security screen door. They demanded entry but did not identify themselves as police officers, nor were they wearing any identifying insignia indicating these individuals as law enforcement agents.

Fearing for his well being, plaintiff refused entry to these individuals and returned to his apartment. He climbed out the second floor window in the rear of the building and jumped onto the roof of a dog house located in the backyard. After jumping down from the dog house roof, plaintiff ran across the backyard patio to the side of a garage located on the adjoining property.

He scaled the garage and ran across the roof towards the front of that property located on Highland Place. As he was sitting on the roof's ledge, with one leg over the side preparing to climb down from the garage roof, he heard someone from behind him yell "freeze, don't move." He turned and observed a white male on the roof with a weapon drawn. This white male later identified by plaintiff at trial as police officer Thomas O'Rourke approached plaintiff and advised him that he would assist plaintiff in getting off the roof. According to plaintiff, officer O'Rourke then pushed plaintiff off the roof causing him to fall to the sidewalk below.

Plaintiff was then taken into custody and transported to the 75th police precinct, complaining of pain to his right leg and knee and requesting medical services. After a few hours, plaintiff was transported to Kings County Hospital via ambulance. A police officer escorted plaintiff in the ambulance. At the hospital, he was examined and treated while handcuffed and remained at all times in the presence of a police officer. In the early morning hours of April 17, 1999, plaintiff's handcuffs were removed, and he was advised that he was no longer in custody as his arrest had been voided. He was further advised that the warrant upon which the arrest was based had been previously satisfied by his arraignment appearance two weeks earlier. He was thereafter discharged from the hospital with pain medication, a knee immobilizer, crutches, and instructions to follow up with the orthopedic clinic of the hospital.

*2 On June 22, 1999, plaintiff underwent a surgical procedure on his right knee. This procedure involved replacing the anterior cruciate ligament (ACL) with up to eighty percent of the medial hamstring located in the back of plaintiff's right leg, as well as debridement and suture repair of the medial meniscus. On December 20, 2006, plaintiff underwent a second operation at Mount Vernon Hospital. This surgery disclosed that the first procedure had failed, and as a result, the hamstring was removed and replaced with part of plaintiff's Achilles tendon. Further, the tendon was secured on one end with permanent hardware, including a screw in the femur with a plug in the tibia, and a bone to bone graft at the other end. Further debridement of dead tissue of the meniscus was also required. Plaintiff's prognosis, as opined by Dr. Leonard Harrison at trial, was poor requiring eventual total knee replacement.

The parties appeared in Part 6 for trial on May 21, May 22 and May 28 through June 5, 2008. On June 5, 2008, the jury returned a verdict in favor of plaintiff awarding the following damages: \$20,000.00 for pain and suffering as result of plaintiff's false arrest commencing on April 16, 1999 and concluding on April 17, 1999; \$20,000.00 for pain and suffering as result of plaintiff's battery by handcuffing commencing on April 16, 1999 and concluding on April 17, 1999; \$150,000.00 for past pain and suffering as a result of being pushed off the garage roof; and \$900,000.00 for plaintiff's future pain and suffering over a period of twenty years as a result of having been pushed off the garage roof; all of which totals \$1,090,000.00.

LAW AND APPLICATION

Motion to aside the jury verdict pursuant to CPLR § 4404

as against the weight of the credible evidence

Defendants seek to set aside the jury verdict pursuant to CPLR § 4404 as against the weight of the credible evidence. For a court to conclude that a jury verdict is not supported by legally sufficient evidence, there must be no valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusions reached by the jury on the basis of the evidence presented at trial. See Courtney v. Port Authority of N.Y. & N.J., 45 AD3d 801, 802, 846 N.Y.S.2d 33 (2nd Dept.2007). In considering such a motion, the court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the non-moving party. See Figueroa v. Sliowski, 43 AD3d 858, 841 N.Y.S.2d 677 (2nd Dept.2007).

Defendants claim that plaintiff's version of events was so utterly incredible as to be unworthy of belief as a matter of law. Specifically, defendants claim that it is manifestly untrue and contrary to common experience that a New York City police officer would push plaintiff from the roof causing injury. See Cruz v. N.Y. City Transit Auth., 31 AD3d 688, 690, 821 N.Y.S.2d 97 (2nd Dept.2006). Further, it is urged that since plaintiff is a convicted felon, used aliases during his illegal stay in the United States, refused to take responsibility for his prior convictions, and gave varying versions of the events over the course of the litigation, he is unworthy of belief as a matter of law.

*3 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, Inc., 86 N.Y.2d 744, 746, 631 N.Y.S.2d 122, 655 N.E.2d 163 (1995). A jury's determination as to issues of credibility is entitled to great deference given its opportunity to hear and observe the witnesses. See Beaumont v. City of New York, 2008 N.Y. Slip Op 09013 (2nd Dept.11-18-2008). Whether a jury verdict should be set aside as contrary to the weight of the evidence does not involve a question of law, but rather requires discretionary balancing of many factors. See Solon v. Voziiyanov, 2008 N.Y. Slip Op 09066 (2nd Dept.11-18-2008). Here, the parties provided conflicting testimony as to the facts surrounding the events of April 16-17, 1999. These divergent accounts raised questions of credibility to be resolved by the jury. In this case whether or not the result might have been different after a non-jury trial it simply cannot be said that the evidence so preponderated in favor of defendants that the jury could not have reached its verdict in favor of plaintiff on any fair interpretation of the evidence, nor that plaintiff failed to establish a prima facie case. Particularly where, as here, plaintiff explained the discrepancies and omissions in his prior statements, admitted his criminal history and illegal immigration status and the accounts offered at trial by Police Officer Jenkins and Police Officer O'Rourke were markedly divergent. Simply put, the evidence at trial provided a valid line of reasoning and permissible inferences to support the jury's conclusions. See Scibelli v. Herman, 49 AD3d 627, 856 N.Y.S.2d 126 (2nd Dept.2008). Therefore, defendants' motion seeking to set aside the verdict pursuant to CPLR § 4404 is denied.

Motion to reduce the jury verdict pursuant to CPLR § 5501 as excessive Defendants also seek a reduction in the jury verdict pursuant to CPLR § 5501 claiming that the jury's award of damages was excessive. While the amount of damages awarded for personal injuries is primarily a question for the jury, it may be set aside if it deviates materially from what would be reasonable compensation. See Sanchez v. Kronengold, 33 AD3d 607, 608, 822 N.Y.S.2d 294 (2nd Dept.2006). Upon consideration of the nature and extent of the injuries sustained by plaintiff, the court finds that the jury awards for battery, false arrest and future pain and suffering deviate materially from what would be reasonable compensation.

Specifically, the time spent by plaintiff in wrongful custody pursuant to the false arrest amounted to no more than eight hours, a substantial part of which was spent obtaining treatment in the hospital emergency room. While this custodial time may have caused plaintiff humiliation and deprivation of liberty, it overlapped the time plaintiff spent in handcuffs, the application of which caused no physical injury to plaintiff. Finally, there was no objective evidence that he suffered from significant damage to his reputation as a result of the defendants' actions. See Lynch v. County of Nassau, 278 A.D.2d 205, 206, 717 N.Y.S.2d 248 (2nd Dept.2000). In such circumstances, the court finds the awards of \$20,000.00 for false arrest and \$20,000.00 for battery to

deviate materially from what would be reasonable compensation. See CPLR § 5501(c).

*4 Additionally, the jury award of \$900,000.00 for plaintiff's future pain and suffering also deviates materially from what would be reasonable compensation under the circumstances of this case. See Van Ness v. N.Y.C. Transit Auth., 288 A.D.2d 374, 734 N.Y.S.2d 73 (2nd Dept.2001).

Therefore, a new trial is granted on the issue of damages only, unless within 30 days after service upon plaintiff of a copy of this decision and order plaintiff shall serve and file in the office of the Clerk of the Supreme Court, Kings County, a written stipulation consenting to reduce the verdict as to damages for pain and suffering as result of plaintiff's false arrest commencing on April 16, 1999 and concluding on April 17, 1999 from \$20,000.00 to \$2,500.00, for pain and suffering as result of plaintiff's battery by handcuffing commencing on April 16, 1999 and concluding on April 17, 1999 from \$20,000.00 to \$2,500.00, and for future pain and suffering as a result of being pushed off the garage roof for twenty (20) years from \$900,000.00 to \$325,000.00. See Lavaud v. Nixon, 305 A.D.2d 376, 758 N.Y.S.2d 682 (2nd Dept.2003).

CONCLUSION

This constitutes the decision and order of the Court. Defendants are directed to settle order in accordance with this decision.

N.Y.Sup.,2008.

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