

PART 12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

_____X
Dessa Sore, Davin

Index No. 1607/04

-against-

Hon. John A Barone

Justice.

MCHA_____X

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this
_____ memorandum decision.

_____ motion is decided in accordance with the annexed

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

RECEIVED
BRONX COUNTY CLERK'S OFFICE

MAR 12 2009

PAID

NO FEE

Dated: 3, 3, 09

Hon. [Signature]
J.S.C.
John A. Barone

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IA-12

-----x
Davin Dessassore,

Plaintiff(s),

- against -

INDEX. NO.: 16097/04

New York City Housing Authority,

Defendant(s).

-----x
HON. JOHN A. BARONE:

Defendant has moved to set aside the verdict the jury rendered and for a new trial on all issues pursuant to CPLR 4404, on the grounds that the verdict was against the weight of the evidence, and for remittitur pursuant to CPLR 5501(c) on the grounds that the jury's award for past pain and suffering of \$5 million deviated materially from what would be reasonable compensation for that component of the damages.

Plaintiff opposes defendants motion and moves under CPLR 4404 to set aside the jury verdict as against the weight of the evidence insofar as it awarded nothing to plaintiff for future damages. The motions are consolidated for disposition. For reasons set forth below defendant's motion to set aside the jury's verdict as to liability is denied. Defendant's and plaintiff's motion are granted to the extent that a new trial is granted for both past and future damages.

The trial in this action began on May 29, 2008 and the jury rendered its verdict on June 11, 2008, finding for the plaintiff in the amount of \$5,000,000.00 for past pain and suffering with nothing awarded for future damages or medicals. The case involved plaintiff's fall on a staircase on December 11, 2003 in the Bronxdale Projects at 1805 Bruckner Blvd, Bronx, NY. Plaintiff fell while visiting his mother on what he claimed was a dimly lit staircase. As he stumbled he reached for a handrail. However, that portion of the railing was missing. It was laying on the stairwell about four or five inches below the top step and it was on this railing

that plaintiff tripped. He plunged forward down the staircase and sustained serious injuries as a result of his fall. The jury heard extensive testimony regarding plaintiff's injury with six physicians testifying, three for each side. Testimony was adduced at trial that plaintiff suffered extreme pain from his injuries and developed hemiparesis, his left side being affected, defendant previously being left hand dominant. Pain was treated through prescription pain medication. Plaintiff underwent two surgeries and plaintiff now wears a back and left leg brace. Plaintiff testified to a continued lack of feeling in his left hand and arm with some feeling in his thumb only. He has limited control over his left arm and cannot raise it above his shoulder. His left leg has atrophied and he now has trouble performing the simplest activities such as walking, dressing and getting out of bed.

Defendant contested both liability and the extent of plaintiff's injuries. The jury did accept defendant's contention that the plaintiff was negligent in speaking on his cell phone while descending the staircase but concluded that this was not a proximate cause of his injury. As hereinafter noted in the legal discussion, jury's verdict as to proximate cause should be affirmed. It is not logically impossible to find negligence while not finding proximate cause. Paylou v. City of New York, 8 NY 3d 961. This is why the court almost always instructs the jury as to the legal definition of proximate cause in any action alleging negligence. After nine days of trial the jury rendered its verdict finding defendant to be 100% liable for plaintiff's injury and awarding plaintiff \$5,000,000.00 for past pain and suffering but nothing for future damages.

On the question of liability there is no reason to disturb the jury findings. A jury verdict is entitled to the benefit of every fair and reasonable inference which can be drawn from the evidence. Substantial evidence was presented at trial to justify the jury verdict on liability. While counter-evidence was introduced by defendant it was certainly within the province of the jury to reject that evidence. The court must afford due deference to the jury's role as fact-finder particularly with regard to the question of proximate cause. DaBiere v. Craig, 284 AD 2d 885. Before a trial court may exercise its discretion to set aside a verdict it must determine that the jury's conclusion on liability could not rationally be reached upon the evidence adduced at trial. Brandon v. Thorp, 112 AD 2d 490. Even in those instances in which a court believes that

as a trier of fact it would have reached a different result it has no power to set aside a jury verdict unless the court concludes that substantial justice has not been done. A successful litigant is entitled to the benefits of a favorable jury verdict. Romero v. Metropolitan Suburban Bus Authority, 25 AD 3d 683; Creagh v. United Fruit Co., 178 F. Supp. 301. In this case there is no question that the jury's verdict is well supported by the evidence in the case.

As to the question of damages, however, there is good reason to believe that the jury either did not understand the court's instructions or did not follow them.

Both sides have pointed to the anomaly in the jury's verdict. While awarding plaintiff \$5,000,000.00 for past pain and suffering it awarded plaintiff nothing for future damages. Given the undoubted severity and permanence of plaintiff's injuries there can be no doubt that plaintiff will incur future pain and suffering. There are a number of possible explanations for the jury's conduct. Either they concluded that \$5,000,000.00 was an appropriate figure for damages and went no further or perhaps they did not understand the courts instruction and did not ask for further instruction and never considered future damages. It is also possible that given the lateness of the hour or some other intervening factor the jury simply rushed through the damage portion of the verdict. The court cannot and will not engage in speculation as to this matter. Accordingly, a new trial on damages is ordered.

The jury verdict on liability in favor of the plaintiff is affirmed. A new trial is ordered as to damages.

This constitutes the decision and order of this Court.

Date: 3/3/09



John A. Barone, JSC