

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: 1A-12

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Linda Boyd,

Plaintiff(s),

- against -

INDEX. NO.: 14783/99

Manhattan Bronx Surface Transit Operating Authority
and New York City Transit Authority,

Defendant(s).
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HON. JOHN A. BARONE:

Procedural History

This is an application to set aside the verdict of the jury pursuant to CPLR 4404(1). The underlying case involved a claim by plaintiff, a passenger on a MABSTOA bus that she was injured due to a defect in the metal strap which she grabbed to steady herself when the bus lurched suddenly.

The case was tried initially in 2005 before Justice Walker. On June 2, 2005 the jury returned a verdict in favor of plaintiff. The verdict was affirmed by the Appellate Division but on appeal to the Court of Appeals it was overturned on grounds not relevant for the purposes of this motion.

The Re-Trial

The procedural history is relevant because it relates to and partially explains the issue which the court will address in this opinion. The retrial began on October 8, 2008. On October 21, 2008, the jury rendered a verdict in favor of the defendant. While counsel in their supporting papers concentrated on the issue of whether the jury verdict was supported by

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sufficient evidence, the court is more concerned with another issue also addressed by counsel: whether the conduct of counsel on both sides was so inflammatory and prejudicial that the jury was unable to render a proper verdict.

The original trial of this case was apparently highly contentious. The learned trial judge and counsel all agree on this point. Although both attorneys are experienced counsel, veterans of many courtroom wars, it was evident that they allowed their previous battles to seep into the retrial and adversely affect their demeanor in this case. Despite numerous warnings from the court, counsel repeatedly engaged in personal attacks, invective, and recriminations in front of the jury. In this regard the court must emphasize that neither side was blameless. Given the experience and competence of both counsel the court was somewhat reticent in injecting itself into the fray hoping that they would modify their conduct. This proved not to be the case. Both counsel freely interrupted one another and the court, often in a loud tone of voice. Counsel would intrude upon their adversary's questioning or presentation. Defense counsel requested that the court instruct plaintiff's counsel to "shut her mouth". Thereafter counsel apologized and the court delivered a curative instruction to the jury. Were this an isolated incident the court would not have provided a basis on which to set aside the jury verdict but this type of behavior was far too characteristic of counsel's demeanor during the trial. Defense attorney made numerous objections interrupting plaintiff's summation over matters which were properly left to the recollection or discretion of the jury. Plaintiff's counsel for her part made disparaging comments about defense case, audible to the jury, while defendant was examining witness and expressed her frustrations with defense counsel once again in tones audible to the jury. It is not the court's purpose here to assess who was the more culpable party. Rather the court is laying out the facts albeit in an abridged fashion as a prelude to considering the appropriate remedy under existing law.

Governing Law

The rule in New York has always been that a trial court may set aside a jury verdict and

order a new trial where there has been misconduct of counsel such as would influence the verdict. Johnson v. Lazarowitz, 4 AD 3d 334; Rich v. City of New York, 84 Ad 2d 578. This is particularly true where the actions of counsel have so disrupted or poisoned orderly trial proceedings as to render a just verdict impossible. Reilly v. Wright, 73 Misc. 2d 801.

In analyzing the conduct of counsel in this trial the court concludes that the jury cannot but have been affected by the constant and bitter rancor exhibited by counsel during the course of the trial. Because of this the trial was changed from a dispassionate search for the truth into a battle of the wills, a personality clash between two bitter adversaries. The cumulative effect of this conduct was to taint the entire trial and effectively destroy any chance for a fair outcome. Valenzuela v. City of New York, 59 AD 3d 40. The introduction of so many various irrelevancies and inflammatory remarks unrelated to any actual issues in the case require reversal of the judgment herein. Russo v. Pollack, 88 AD 2d 584; Caraballo v. City of New York, 86 Ad 2d 580; Cusumano v. New York City Tr. Auth., 75 AD 2d 801.

It is hoped that in the retrial of this case counsel will conduct themselves in a manner more befitting their stature as experienced, qualified and highly competent attorneys.

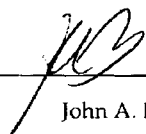
The court's determination renders unnecessary any discussion of other claimed issues.

Conclusion

The verdict of the jury in this matter is set aside.

This constitutes the decision and order of this Court.

Date: 11/17/09



John A. Barone, JSC