

Alvarez v Beth Abraham Health Servs.
2012 NY Slip Op 09174
Decided on December 27, 2012
Appellate Division, First Department
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Decided on December 27, 2012

Mazzarelli, J.P., Moskowitz, DeGrasse, Manzanet-Daniels, Clark, JJ.

8904 7124/05

[*1]Gualbert Alvarez, Plaintiff-Respondent, —

v

Beth Abraham Health Services, et al., Defendants-Appellants.

Mauro Lilling Naparty LLP, Woodbury (Katherine Herr Solomon of counsel), for appellants.

Pollack, Pollack, Isaac & De Cicco, New York (Michael H. Zhu of counsel), for respondent.

Judgment, Supreme Court, Bronx County (Alexander W. Hunter, Jr., J.), entered September 28, 2011, upon a jury verdict, awarding plaintiff damages in the amount of \$500,000 for past pain and suffering and \$250,000 for future pain and suffering over 42 years, unanimously affirmed, without costs.

Defendants failed to preserve their argument that the jury's verdict was inconsistent as to liability and culpable conduct, as they failed to raise the argument before the jury

was discharged (*see Barry v Manglass*, 55 NY2d 803, 806 [1981]; *Arrieta v Shams Waterproofing, Inc.*, 76 AD3d 495, 496 [1st Dept 2010]). In any event, the jury's verdict was consistent and can be reconciled with a reasonable view of the evidence (*see Martinez v New York City Tr. Auth.*, 41 AD3d 174, 175 [1st Dept 2007]). Further, the court's interrogatory regarding "the skin care provided to the plaintiff" was unambiguous and consistent with the charge, evidence and applicable law (*compare Plunkett v Emergency Med. Serv. of N.Y. City*, 234 AD2d 162, 163 [1st Dept 1996], *with Rodriguez v Budget Rent-A-Car Sys., Inc.*, 44 AD3d 216, 223 [1st Dept 2007]).

We find the jury's award for past pain and suffering appropriate. Given plaintiff's relatively young age, and in light of the evidence that his ulcer may reopen in the future, we decline to disturb the jury's award for future pain and suffering.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: DECEMBER 27, 2012

CLERK

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