

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IAS PART 23A**

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HERMINIO PIZARRO and OLGA IRIS GARCIA,

Plaintiffs,

Index No.: 304460/2008

-against-

Decision and Order

THE CITY OF NEW YORK and P.O. EFRAIN
MORALES,

Defendants.

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HON. ALEXANDER W. HUNTER, JR.

The motion by defendants The City of New York and P.O. Efrain Morales (herein after "The City" and "PO Morales") for an order staying the entry of judgment until 60 days after the decision on all post-trial motions; setting aside the jury's verdict and granting judgment for defendants; or in the alternative, setting aside the verdict as a matter of law and ordering a new trial, is denied in its entirety. Plaintiffs' cross-motion for a new trial on damages and for leave to amend the pleadings to conform to the proof, is denied in its entirety.

The trial of this matter involved personal injuries sustained by plaintiffs on August 4, 2007, first in front of 245 Brook Avenue, Bronx, New York, then while being transported in a police car to the 40th Precinct, and also while inside the 40th Precinct bathroom. On July 31, 2014, the jury rendered a verdict in favor of plaintiff Hermino Pizarro ("Pizarro") awarding him damages as follows: past pain and suffering in the amount of \$2,000,000; future pain and suffering in the amount of \$0; and punitive damages from PO Morales in the amount of \$1,000,000. The jury also awarded plaintiff Olga Iris Garcia ("Garcia") damages as follows: past pain and suffering in the amount of \$250,000; future pain and suffering in the amount of \$0; and punitive damages from PO Morales in the amount of \$250,000.

The City makes several points and sub-points in support of its motion to set aside the jury's verdict and damages award. This court will not address each of the City's points and sub-points and will only refer to them generally.

Defendants seek an order setting aside the jury's verdict and entering judgment in their favor as a matter of law on the grounds that plaintiff Pizarro failed to establish a prima facie case as to federal causes of action for false arrest and malicious prosecution, state and federal causes of action for battery/excessive force, and punitive damages as awarded against PO Morales. Defendants also argue that plaintiff Garcia failed to establish a prima facie case as to state and federal causes of action for battery/excessive force and punitive damages as awarded against PO Morales.

Moreover, The City and PO Morales maintain that the verdict should be set aside as a matter of law and a new trial ordered on grounds that the verdict was against the weight of the evidence or in the alternative, in the interest of justice. Finally, defendants argue that the jury's award for past pain and suffering for both plaintiffs was excessive and deviated substantially from what is reasonable based on similar cases and circumstances and that therefore a new trial on damages should be granted.

Plaintiffs oppose the defendants' motion and cross-move for a new trial on damages for future pain and suffering only, as the jury's award of \$0 for future pain and suffering is against the weight of the evidence.

CPLR 4404 provides, "After a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered on favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court." The standard to be used is that which "deviates materially from what would be reasonable." See, CPLR 5501(c).

A trial court can set aside a jury's verdict and order a new trial "only if there was no 'valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of evidence presented.' The test...is not whether the jury erred in weighing the evidence, but whether any viable evidence existed to support the verdict." (citations omitted). Lolik v. Big V Supermarkets, Inc., 86 N.Y.2d 744 (1995). Moreover, it is well established that the court's discretionary power pursuant to CPLR 4401, "must be exercised with caution since, in the absence of an indication that substantial justice has not been done, a litigant is entitled to the benefit of a favorable verdict. Fact-finding is within the province of the jury, not the trial court. '[A] jury verdict in favor of a defendant should not be set aside unless the jury could not have reached the verdict on any fair interpretation of the evidence.'" (citations omitted). Brown v. Taylor, 221 A.D.2d 208 (1st Dept. 1995).

In the case at bar, there were significant issues of fact that were up to the jury to determine including the level of involvement by PO Morales. "Before § 1983 damages are awarded, a plaintiff must show by a preponderance of the evidence that the defendant was personally involved—that is, he directly participated—in the alleged constitutional deprivations." (citations omitted). Alla v. Verkay, 979 F.Supp2d 349, 368 (E.D.N.Y. 2013). However, "this requirement 'does not foreclose the liability of a person who, with knowledge of the illegality, participates in bringing about a violation of the victim's rights but does so in a manner that might be said to be 'indirect'—such as ordering or helping others to do the unlawful acts, rather than doing them him—or herself.' There is sufficient evidence from which the jury could conclude that [Police Officer] participated in the arrest in both direct and indirect ways." (citations omitted). Id. This court finds that there was sufficient evidence presented to the jury to establish plaintiffs' prima facie case and a valid line of reasoning that led to the conclusion reached by the jury.

Furthermore, ordering a new trial in the interest of justice “is predicated on the assumption that the judge who presides at trial is in the best position to evaluate errors therein.” **Micallef v. Miehle**, 38 N.Y.2d 376 (1976). Applying these principals to the present case, the motion to set aside the verdict in the interest of justice is denied. The rulings referred to by defendants in their papers were proper, and as such, there is no evidence “that substantial justice has not been done” in this case. **Gomez v. Park Donuts**, 249 A.D.2d 266 (2nd Dept. 1998).

With respect to the jury’s award to the plaintiff, courts have held that the amount of damages awarded for personal injuries is primarily a question of fact for the jury. **Iazetti v. City of New York**, 216 A.D.2d 214 (1st Dept. 1995). In order to determine if an award is excessive, the standard that has been applied in the appellate courts and which has been applied at the trial court level is, “deviates materially from what would be reasonable.” CPLR 5501(c). Thus, the amount of damages awarded by a jury may be set aside if it deviates materially from what would be reasonable compensation. **See, Donlon v. City of New York**, 284 A.D.2d 13 (1st Dept. 2001). Defendants herein have failed to demonstrate based upon precedence or otherwise, that the jury’s verdict deviates materially from what would be reasonable compensation. Likewise the jury’s award for future pain and suffering was proper in light of the evidence and taking into account the facts of this case.

Accordingly, defendants’ motion is denied in its entirety. Similarly, plaintiffs’ cross-motion is denied in its entirety.

Defendants are directed to serve a copy of this order with notice of entry upon all parties within thirty (30) days of entry and file proof thereof with the clerk’s office.

This constitutes the decision and order of this court.

Dated: March 31, 2015

ENTER:



J.S.C.
ALEXANDER W. HUNTER JR