At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 27th day of March 2019

PRESENT:
HON. CAROLYN E. WADE,
Justice

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Martine Anne Bisagni,

Plaintiff,

Index No. 505647/2015

-against-

DECISION and ORDER

L A Squires-Sussman,

Defendants.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of plaintiff Martine Anne Bisagni's motion:

Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed	1
Cross-Motion and Affidavits/Affirmations	
Answering Affidavits/Affirmations	2
Reply Affidavits/Affirmations	3
Memorandum of Law	

Upon the foregoing cited papers and after oral argument, plaintiff Martine Anne Bisagni moves, pursuant to CPLR 4404 (a), for an Order setting aside the jury verdict rendered on January 25, 2018.

The underlying action was commenced by Martine Anne Bisagni ("Plaintiff") to recover damages for personal injuries she allegedly sustained in a motor vehicle accident on February 26, 2013. By an Order dated April 7, 2017, Plaintiff was granted summary judgment on the issue of liability upon defendant L A Squires-Sussman ("Defendant")'s default. The damage-only trial commenced on January 17, 2018 and concluded on January 25, 2018. It must be noted that, during the trial, on the record, Plaintiff and Defendant entered into a hi-low agreement whereby Plaintiff would receive a minimum of $135,000.00 and a maximum of $750,000.00.

The jury returned a verdict finding that Plaintiff did not sustain a serious injury as a result of the subject accident. Pursuant to the hi-low agreement, Plaintiff would recover $135,000.00. Following the verdict, Plaintiff filed the instant motion to set aside the verdict on February 13, 2018, arguing that it was against the weight of the credible evidence. After the instant motion was filed, which was originally returnable on April 6, 2018, Plaintiff discharged her attorney, resulting in at least four adjournments[1] of this motion upon her repeated representation that "no attorney would take [her] case." The matter was marked final on October 26, 2018. Plaintiff, against this Court's directive, proceeded to seek consent from Defendant to request this Court for a further adjournment. On January 11, 2019, the matter was marked fully submitted.

On January 22, 2019, Plaintiff, who remained *pro se*, filed an amended motion to the instant motion without leave of the Court. Upon a brief review, said amended motion is a detailed

[1] Respectively on April 6, 2018, June 15, 2018, September 14, 2018 and October 26, 2018.

account of her entire experience relating to this accident, including the medical expenses and allegedly misconduct by her former attorney that occurred after the trial. This amended motion cannot be considered by this Court, as it was filed without leave of the Court after the instant motion was already marked fully submitted on January 11, 2019 (*see Woodward Med. Rehabilitation, P.C. v State Farm Fire and Cas. Co.*, 34 Misc 3d 138(A) [App Term 2011] ["A party who concludes that a motion is defective or insufficient should apply for and obtain leave to withdraw or amend it"]).

In the instant motion, Plaintiff contends that Defendant replied solely upon the testimony of Dr. Richard Lechtenberg, a neurologist who examined her on April 26, 2016. Plaintiff argues that while Dr. Lechtenberg testified that her MRI did not reveal any structural damage to her brain, he admitted that he diagnosed her with "status post concussion." Plaintiff further avers that Defendant did not present any medical expert to disprove the medical testimony from Plaintiff's orthopedist, Dr. Steven Touliopoulos, that she sustained a significant limitation of use of her knees as a result of the accident.

Defendant, in opposition, submits that neither the alleged traumatic brain injury nor the alleged knee injury is supported by emergency room records. Defendant also contends that Plaintiff's attorney-referred doctors who testified at trial were consulted at least one and a half years after the accident. Defendant asserts that Plaintiff offered no documentary evidence relating to the intervening one and a half years between the accident and her visits to the attorney-referred doctors. Furthermore, Defendant points out that Plaintiff failed to provide a trial transcript for the instant motion.

"To set aside a jury verdict as against the weight of the evidence, it must be concluded that the evidence so preponderated in favor of the movant that the verdict could not have been

reached on any fair interpretation of the evidence" (*Jun Suk Seo v Walsh*, 82 AD3d 710, 711 [2d Dept 2011], citing *Scudera v. Mahbubur*, 39 AD3d 620, 620 [2d Dept 2011]; *Lolik v Big V Supermarkets, Inc.*, 86 NY2d 744, 746 [1995]; *Nicastro v Park*, 113 AD2d 129, 134 [2d Dept 1985]). "[T]he trial 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 nonmovant (*Tapia v Dattco, Inc.*, 32 AD3d 842, 844 [2d Dept 2006], citing *Hand v Field*, 15 AD3d 542, 543 [2d Dept 2005]).

Here, first, given the nature of the issues raised on this particular motion, the absence of a transcript, or relevant portions thereof, precluded a meaningful review (*Gorbea v Decohen*, 118 AD3d 548, 549 [1st Dept 2014]). But even taking Plaintiff's contentions into consideration, the evidence did not preponderate so heavily in her favor that the jury could not have reached the verdict in favor of the Defendant by any fair interpretation of the evidence (*Easton v Falzarano*, 102 AD3d 826, 826-27 [2d Dept 2013]; see also *Daniels v Simon*, 99 AD3d 658, 659 [2d Dept 2012]; *Rosenfeld v Baker*, 78 AD3d 810, 811 [2d Dept 2010]. A fair interpretation of the evidence supports the jury's conclusion that, based on the evidence before it, Plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject motor vehicle accident (see *Rosenfeld*, at 812; see also *Handwerker v Dominick L. Cervi, Inc.*, 57 AD3d 615, 616 [2d Dept 2008]; *Marino v Cunningham*, 44 AD3d 912, 913 [2d Dept 2007]).

In addition, "[w]here, as here, conflicting expert testimony is presented, the jury is entitled to accept one expert's opinion, and reject that of another expert" (*Morales v Interfaith Med. Ctr.*, 71 AD3d 648, 650 [2d Dept 2010]; see also *Liounis v New York City Tr. Auth.*, 92 AD3d 643, 644 [2d Dept 2012]). "It is for the jury to make determinations as to the credibility of the witnesses, and it is accorded great deference, as it had the opportunity to see and hear the

witnesses" (*Davison v New York City Tr. Auth.*, 63 AD3d 871, 872 [2d Dept 2009]). "The jury's resolution of the credibility issues in favor of the defendant is supported by a fair interpretation of the evidence and, thus, may not be disturbed" (*Daniels v Simon*, 99 AD3d 658, 659 [2d Dept 2012]). The jury has spoken and I see no basis to disturb its determination (see *Wallace v City of New York*, 108 AD3d 760, 764 [2d Dept 2013]).

Based on the above, plaintiff Martine Anne Bisagni's motion to set aside the jury verdict rendered on January 25, 2018 is **DENIED**.

This constitutes the Decision and Order of the court.

HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

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ACTING SUPREME COURT JUSTICE

KINGS COUNTY CLERK
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