

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy M. Bannon
Justice

PART 42

WALID MOHAMED, et al.

INDEX NO. 154808/2013

- v -

MOTION DATE 7/12/2017

CITY OF NEW YORK, et al.

MOTION SEQ. NO. 007

The following papers were read on this motion to stay the entry of judgment and to set aside a jury verdict and for judgment as a matter of law or, in the alternative, to set aside the verdict in the interest of justice.

Table with 2 columns: Document Type and No(s). Rows include Notice of Motion/ Order to Show Cause, Answering Affirmation(s), and Replying Affirmation(s).

In this action, inter alia, pursuant to 42 USC § 1983 to recover damages for the violation of the infant plaintiff's constitutional rights, the defendants move pursuant to CPLR 4404(a) to set aside a jury verdict in the plaintiff's favor and for judgment as a matter of law or, in the alternative, to set aside the verdict in the interest of justice or as against the weight of evidence.

On December 9, 2016, after a highly contested 20-day jury trial, the jury found that three police officers assaulted, battered, and violated the plaintiff's Fourth Amendment rights by using excessive force. As relevant here, the jury awarded him the sums of \$750,000 in compensatory damages for future emotional distress over 50 years, \$10,000 in punitive damages against the defendant Steven Hernandez, and \$5,000 in punitive damages against each of the defendants George Santana and Robert Larocco.

The court scheduled oral argument in connection with the instant motion for July 5, 2017, which was adjourned, at the defendants' request, until July 12, 2017. On July 12, all parties appeared, and were ready to proceed with argument, but defense counsel requested, for the first time, that the argument be transcribed. The court denied the request, and gave counsel the option of arguing the motion without transcription, or submitting the motion on papers.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Term, 2nd & 11th Jud. Dists. 1997); Mingla v City of New York, 2014 NY Slip Op 30162(U), *16 (Sup Ct, N.Y. County, Jan. 15, 2015) (Stallman, J.). Contrary to the defendants' contention, even where permitted, "[o]ral argument of a motion is not a 'proceeding[] in [a] cause tried or heard' within the meaning of Judiciary Law § 295." Stevenson v City of Rome, 237 AD2d 946, 946 (4th Dept. 1997). Hence, no stenographic notes of the argument were required to be made or transcribed. See id.; see also Torres v American Bldg. Maintenance Co. of NY, 51 AD3d 905 (2nd Dept. 2008); Feuer v HASC Summer Program, 247 AD2d 429 (2nd Dept. 1998); cf. People v Koufomichalis, 2 AD3d 987 (3rd Dept. 2003) (appearance for assignment of counsel was not a trial proceeding within the meaning of Judiciary Law § 295). Nor is there is any merit to the motion that was submitted.

The trial court's role on a motion pursuant to CPLR 4404(a) is very limited, since deference is owed to the fact-finding powers of a jury, and a trial judge may not substitute his or her own credibility determinations for that of the jury. "A trial court may not interfere with the fact-finding function of a jury simply because it disagrees with the verdict or would have evaluated credibility in a different manner." Rivera v 4064 Realty Co., 17 AD3d 201, 203 (1st Dept. 2005)

A motion pursuant to CPLR 4404(a) to set aside a jury verdict and for judgment as a matter of law may only be granted where there is "simply no valid line of reasoning and permissible inferences which could possibly lead rational men [or women] to the conclusion reached by the jury on the basis of the evidence presented at trial." Cohen v Hallmark Cards, 45 NY2d 493, 499 (1978). Here, it cannot be said that there was no valid line of reasoning to support the verdict. See Cardoza v City of New York, 139 AD3d 151 (1st Dept. 2016). Contrary to the defendants' contention, the evidence adduced by the plaintiff at trial was legally sufficient to overcome any defense based on the allegation that the individual defendant police officers were protected by qualified immunity. See Kingsley v Hendrickson, ___ US ___, 135 S Ct 2466 (2016); Dancy v McGinley, 843 F3d 93 (2nd Cir. 2016); Rogoz v City of Hartford, 796 F3d 236 (2nd Cir. 2015); Garcia v Dutchess County, 43 F Supp 3d 281 (SD NY 2014); Romaine v Rawson, 140 F Supp 2d 204 (ND NY 2001).

A CPLR 4404(a) motion to set aside a jury verdict as contrary to the weight of the evidence and for a new trial may only be granted where the verdict is "palpably wrong" (Rivera v 4064 Realty Co., supra, at 203) because the "evidence so preponderated in favor" of the movant that the verdict "could not have been reached on any fair interpretation of the evidence." Lolik v Big V Supermarkets, 86 NY2d 744, 746 (1995). A fair interpretation of the evidence supports the verdict here.

To the extent that the defendants move pursuant to CPLR 4404(a) to set aside the verdict "in the interest of justice," such a motion "encompasses errors in the trial court's rulings on the admissibility of evidence, mistakes in the charge, misconduct, newly discovered evidence, and surprise." Russo v Levat, 143 AD3d 966, 968 (2nd Dept. 2016). Nonetheless, the interest of justice does not warrant setting aside the verdict here, since, contrary to the defendants' contention, the court discerns no errors in the admission of evidence and no mistakes in the charge given to the jury.

The \$750,000 award for future emotional distress, which equals \$15,000 per year over a period

of 50 years, does not deviate materially from what is reasonable compensation. See CPLR 5501(c); Rivera v United Parcel Serv., Inc., 148 AD3d 574 (1st Dept. 2017); Kinge v State of New York, 79 AD3d 1473 (3rd Dept. 2010); Papa v City of New York, 194 AD2d 527 (2nd Dept. 1993). Nor do the awards of punitive damages here deviate materially from what are reasonable punitive damages awards. See Cardoza v City of York, *supra*.

In light of the foregoing, the request to stay entry of the judgment pending determination of this motion has been rendered academic, and the court discerns no other basis upon which to grant a stay.

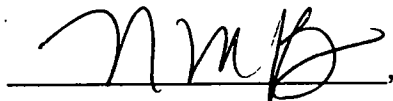
The defendants' remaining contentions either are without merit or constitute improper attempts to argue matters that are not the proper subject of a motion pursuant to CPLR 4404(a).

Accordingly, it is

ORDERED that the defendants' motion is denied in its entirety.

This constitutes the Decision and Order of the court.

Dated: 8/7/17

 JSC
HON. NANCY M. BANNON

- 1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
- 2. Check as appropriate: MOTION IS: GRANTED DENIED OTHER