

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Thomas v Hudson Group HG Retail, LLC

2023 NY Slip Op 03494 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2023) · No. 2020-04608 · Decided June 28, 2023

SUMMARY

The Appellate Division, Second Department affirmed a judgment dismissing the plaintiff's personal-injury action after a jury found that the subject motor vehicle accident was not a substantial factor in causing the plaintiff's injuries. The court held that the verdict was supported by a fair interpretation of the evidence and that the trial court properly admitted CT scan films through business-records testimony without relying on CPLR 3122-a or 4532-a.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Paul Wooten; William G. Ford; Lillian Wan
JURISDICTION	New York
DECIDED	June 28, 2023
DOCKET	2020-04608
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from a judgment entered after a jury trial on damages, where the jury found that the subject motor vehicle accident was not a substantial factor in causing the plaintiff's injuries.
STANDARD OF REVIEW	A jury verdict for a defendant may be set aside as contrary to the weight of the evidence only when the evidence so heavily preponderates in the plaintiff's favor that the verdict could not have been reached on any fair interpretation of the evidence. The jury's credibility determinations receive great deference. Evidentiary rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Appellate Division opinion; precedential under New York law, subject to correction before publication in the Official Reports.
PARTIES	Vale Thomas v. Hudson Group HG Retail, LLC, et al.

TOPICS

personal injury

proximate cause

evidence

standard of review

appellate procedure

PRACTICE AREAS

personal injury

torts

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the jury's verdict finding that the accident was not a substantial factor in causing the plaintiff's injuries was contrary to the weight of the evidence.
2. Whether the Supreme Court properly admitted films of a CT scan as business records based on the testimony of the records custodian without compliance with CPLR 3122-a or 4532-a.

HOLDINGS

1. The jury's verdict for the defendants was not contrary to the weight of the evidence because it was based on a fair interpretation of the evidence.
2. The Supreme Court properly admitted the CT scan films as business records based on testimony from the records custodian, and the defendants were not required to comply with CPLR 3122-a or 4532-a because they did not seek admission under either statute.

KEY QUOTATIONS

"A jury verdict in favor of a defendant may not be set aside as contrary to the weight of the evidence unless the evidence preponderates so heavily in the plaintiff's favor that it could not have been reached on any fair interpretation of the evidence" ([*1])

"When a verdict can be reconciled with a reasonable view of the evidence, the successful party is entitled to the presumption that the jury adopted that view" ([*1])

"It is for the jury to make determinations as to the credibility of the witnesses, and great deference in this regard is accorded to the jury, which had the opportunity to see and hear the witnesses" ([*1])

FACTUAL BACKGROUND

Thomas allegedly sustained injuries in a motor vehicle accident. At trial, three defense experts testified that his injuries were degenerative, resulted from a prior accident, and were not caused or exacerbated by the subject accident. The experts also testified that imaging studies taken after the accident were identical to corresponding studies taken before it. The defendants introduced films of a CT scan of Thomas's cervical spine through testimony from the records custodian.

PROCEDURAL HISTORY

Thomas commenced a personal-injury action arising from a motor vehicle accident. Following a jury trial limited to damages, the jury found for the defendants on causation, and the Supreme Court, Kings County, entered judgment dismissing the complaint. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Ditoro v Richmond Univ. Med. Ctr., 202 AD3d 912, 913
- Fernandez v Taping Expert, Inc., 210 AD3d 651, 651-652
- Exarhouleas v Green 317 Madison, LLC, 46 AD3d 854, 855

OPINION

PER CURIAM.

Thomas v Hudson Group HG Retail, LLC (2023 NY Slip Op 03494) Thomas v Hudson Group HG Retail, LLC 2023 NY Slip Op 03494 Decided on June 28, 2023 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on June 28, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P. PAUL WOOTEN WILLIAM G. FORD LILLIAN WAN, JJ. 2020-04608 (Index No. 10770/15) [*1]Vale Thomas, appellant, vHudson Group HG Retail, LLC, et al., respondents. Subin Associates, LLP (Herbert S. Subin and Pollack, Pollack, Isaac & DeCicco, LLP, New York, NY [Brian J. Isaac, Michael H. Zhu, and Kelly Breslauer], of counsel), for appellant.

Eric D. Feldman, New York, NY (Evy Kazansky of counsel), for respondents. DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Pamela L. Fisher, J.), dated March 2, 2020.

The judgment, upon a jury verdict in favor of the defendants on the issue of damages finding that the subject accident was not a substantial factor in causing the plaintiff's injuries, is in favor of the defendants and against the plaintiff dismissing the complaint. ORDERED that the judgment is affirmed, with costs.

The plaintiff commenced this action to recover damages for personal injuries that he allegedly sustained in a motor vehicle accident. After a jury trial on the issue of damages, the jury returned a verdict in favor of the defendants, finding that the subject accident was not a substantial factor in causing the plaintiff's injuries.

The Supreme Court thereafter issued a judgment, upon the jury verdict, in favor of the defendants and against the plaintiff dismissing the complaint. The plaintiff appeals. "A jury verdict in favor of a defendant may not be set aside as contrary to the weight of the evidence unless the evidence

preponderates so heavily in the plaintiff's favor that it could not have been reached on any fair interpretation of the evidence" (*Ditoro v Richmond Univ.*

Med. Ctr., 202 AD3d 912, 913 [internal quotation marks omitted]; see *Fernandez v Taping Expert, Inc.*, 210 AD3d 651, 651). "When a verdict can be reconciled with a reasonable view of the evidence, the successful party is entitled to the presumption that the jury adopted that view" (*Fernandez v Taping Expert, Inc.*, 210 AD3d at 651-652). "It is for the jury to make determinations as to the credibility of the witnesses, and great deference in this regard is accorded to the jury, which had the opportunity to see and hear the witnesses" (*Exarhouleas v Green 317 Madison, LLC*, 46 AD3d 854, 855; see *Fernandez v Taping Expert, Inc.*, 210 AD3d at 652).

Here, three defense experts testified at trial that the plaintiff's injuries were not caused or exacerbated by the subject accident, as the injuries were degenerative in nature and caused by a prior accident. Moreover, these experts testified that the results of imaging studies of the alleged injuries taken after the subject accident were identical to the results of the same studies taken before [*2]the accident.

The verdict in the defendants' favor was thus based on a fair interpretation of the evidence. The Supreme Court providently exercised its discretion in admitting into evidence films of a CT scan of the cervical region of the plaintiff's spine. Contrary to the plaintiff's contention, the defendants were not required to comply with the notice requirements of CPLR 3122-a or 4532-a because they did not seek to admit the films pursuant to either statute, and instead relied on the testimony of the custodian of the records to lay a proper foundation for the admission of the films as business records.

DILLON, J.P., WOOTEN, FORD and WAN, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court