

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

Barreca v. Monadnock Construction, Inc.

131 A.D.3d 659 (2d Dep't 2015) · No. 2014-00376 · Decided August 26, 2015

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the plaintiff's motion to set aside a jury verdict in favor of the defendants in a personal injury action. The court held that defense counsel's summation comments were either fair comments on the evidence or isolated comments that did not deprive the plaintiff of a fair trial.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per Curiam; Reinaldo E. Rivera, J.P.; Ruth C. Balkin, J.; Robert J. Miller, J.; Hector D. LaSalle, J.
JURISDICTION	New York
DECIDED	August 26, 2015
DOCKET	2014-00376
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order denying his CPLR 4404(a) motion to set aside a jury verdict for the defendants on liability and for a new trial.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Michael Barreca v. Monadnock Construction, Inc., et al.

TOPICS

- personal injury
- construction law
- motion for new trial
- appellate procedure
- civil procedure

PRACTICE AREAS

- personal injury
- construction law
- civil procedure

QUESTIONS PRESENTED

1. Whether defense counsel's comments during summation deprived the plaintiff of a fair trial and required the jury verdict on liability to be set aside.
2. Whether the Supreme Court properly denied the plaintiff's CPLR 4404(a) motion for a new trial.

HOLDINGS

1. The summation comments were either fair comments on the evidence or isolated comments that did not deprive the plaintiff of a fair trial; therefore, the order denying the plaintiff's CPLR 4404(a) motion was properly affirmed.

KEY QUOTATIONS

“Contrary to the plaintiff's contentions, the defense counsel's comments during his summation were either fair comments on the evidence or were isolated comments that did not deprive the plaintiff of a fair trial” (131 A.D.3d at 659)

FACTUAL BACKGROUND

The plaintiff sought damages for personal injuries in an action against Monadnock Construction, Inc., and other defendants. A jury returned a verdict in favor of the defendants on the issue of liability. The plaintiff claimed that defense counsel's summation comments deprived him of a fair trial and moved to set aside the verdict and obtain a new trial.

PROCEDURAL HISTORY

Barreca brought an action for personal injuries. After the jury found in favor of the defendants on liability, the Supreme Court, Kings County, denied his motion to set aside the verdict and obtain a new trial. The Appellate Division affirmed that order.

DISPOSITION

affirmed

CASES CITED

- Jean-Louis v. City of New York, 86 A.D.3d 628, 629
- Alston v. Sunharbor Manor, LLC, 48 A.D.3d 600, 603
- Boyd v. Blessey, 96 A.D.2d 816, 817

OPINION

PER CURIAM.

Barreca v Monadnock Constr., Inc. (2015 NY Slip Op 06649) Barreca v Monadnock Constr., Inc. 2015 NY Slip Op 06649 Decided on August 26, 2015 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 August 26, 2015 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P.

RUTH C. BALKIN ROBERT J. MILLER HECTOR D. LASALLE, JJ. 2014-00376 (Index No. 9376/10) [*1]Michael Barreca, appellant, vMonadnock Construction, Inc., et al., respondents. Massimo & Panetta, P.C., Mineola, N.Y. (Frank C. Panetta of counsel), for appellant. Hammill, O'Brien, Croutier, Dempsey, Pender & Koehler, P.C., Syosset, N.Y. (Anton Piotroski of counsel), for respondents.

DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Silber, J.), dated October 17, 2013, which denied his motion pursuant to CPLR 4404(a) to set aside a jury verdict in favor of the defendants on the issue of liability and for a new trial. ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's contentions, the defense counsel's comments during his summation were either fair comments on the evidence or were isolated comments that did not deprive the plaintiff of a fair trial (see generally *Jean-Louis v City of New York*, 86 AD3d 628, 629; *Alston v Sunharbor Manor, LLC*, 48 AD3d 600, 603; cf. *Boyd v Blessey*, 96 AD2d 816, 817).

RIVERA, J.P., BALKIN, MILLER and LASALLE, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court