

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