

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

Mainardi v. Imperial Towers

2026 N.Y. Slip Op. 00125 (App. Div. 2d Dep't 2026) · No. 2023-12175 · Decided January 14, 2026

SUMMARY

The Appellate Division, Second Department, affirmed a judgment dismissing the plaintiff's personal-injury action after a jury found that the defendants were negligent but that their negligence was not a substantial factor in causing the plaintiff's fall. The court rejected challenges concerning trial-court impartiality, admission of a photograph, failure to produce evidence, and the weight of the jury's verdict.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Paul Wooten, J.; William G. Ford, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	January 14, 2026
DOCKET	2023-12175
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a judgment entered after a liability trial and jury verdict in favor of the defendants, dismissing the personal-injury complaint.
STANDARD OF REVIEW	Unpreserved claims regarding trial-court partiality were not reviewable absent an exercise of discretion in the interest of justice. The admission of evidence and refusal to give a failure-to-produce-evidence charge were reviewed for abuse of discretion. A jury verdict may be set aside as contrary to the weight of the evidence only when the evidence so preponderates in favor of the moving party that the verdict could not have been reached on any fair interpretation of the evidence.
PRECEDENTIAL VALUE	Published opinion

PARTIES

Diana Mainardi v. Imperial Towers, Imperial Towers Condominium, Island Condo Management Corp.

TOPICS

premises liability personal injury appellate procedure evidence negligence

PRACTICE AREAS

personal injury premises liability civil procedure appellate procedure evidence

QUESTIONS PRESENTED

1. Whether the plaintiff preserved her claims that the trial court was partial and deprived her of a fair trial.
2. Whether the trial court abused its discretion by admitting a photograph of the accident area.
3. Whether the evidence warranted a jury instruction concerning the defendants' failure to produce certain evidence.
4. Whether the jury's finding that the defendants were negligent but that their negligence was not a substantial factor in causing the plaintiff's fall was contrary to the weight of the evidence.

HOLDINGS

1. The plaintiff's claims of trial-court partiality were unpreserved for appellate review; in any event, the claims lacked merit because she did not show disparate treatment or improper admonishment of counsel.
2. The Supreme Court providently exercised its discretion in admitting the photograph of the accident area.
3. The evidence was insufficient to warrant a jury charge on the defendants' failure to produce certain evidence.
4. The verdict finding the defendants negligent but finding that their negligence was not a substantial factor in causing the plaintiff's fall was supported by a reasonable view of the evidence and was not contrary to the weight of the evidence.

KEY QUOTATIONS

"A jury verdict may be set aside as contrary to the weight of the evidence only if 'the evidence so preponderated in favor of the [moving party] that the verdict could not have been reached on any fair interpretation of the evidence'" (at 2)

"It is within the province of the jury to determine issues of credibility, and great deference is accorded to the jury given its opportunity to see and hear the witnesses'" (at 2)

"A court must not interfere with a jury's fact-finding process merely because it disagrees with its findings or would have evaluated the witnesses' credibility differently and reached a contrary determination'" (at 2)

FACTUAL BACKGROUND

On May 31, 2020, Mainardi visited friends on the second floor of an apartment complex owned, operated, and managed by the defendants. Because the elevator was not working, she used the stairs; while leaving, she opened a door leading from the second-floor hallway into an alcove separated by a step down. After stepping down with her right foot and then her left foot, she lost her balance and fell. The jury found the defendants negligent but determined that their negligence was not a substantial factor in causing the accident.

PROCEDURAL HISTORY

Diana Mainardi commenced the action on October 16, 2020, seeking damages for injuries sustained when she fell near a stairway alcove in the defendants' apartment complex. After a liability trial, the jury found that the defendants were negligent but that their negligence was not a substantial factor in causing the fall. The Supreme Court, Richmond County, entered judgment dismissing the complaint, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Fortune v. New York City Hous. Auth., 201 A.D.3d 705, 708
- Habenicht v. R.K.O. Theatres, 23 A.D.2d 378, 379
- Ioffe v. Seruya, 134 A.D.3d 993, 995-996
- Nunez v. New York City Health & Hosps. Corp. (Elmhurst Hosp. Ctr.), 110 A.D.3d 686, 688
- Evans v. New York City Tr. Auth., 179 A.D.3d 105, 113
- Giglio v. Maher, 282 A.D.2d 707, 707-708
- Madigan v. Putnam County, 230 A.D.3d 751, 753
- Yankovitch v. Fessel, 170 A.D.3d 784, 785
- Pen v. Wheels, Inc., 231 A.D.3d 848, 848
- Lolik v. Big V Supermarkets, 86 N.Y.2d 744, 746
- Galeano v. Giambrone, 218 A.D.3d 745, 746-747
- Williams v. New York City Tr. Auth., 121 A.D.3d 780, 781
- Tsimbalenko v. Irizarry, 104 A.D.3d 842, 843
- Palermo v. Original California Taqueria, Inc., 72 A.D.3d 917, 918
- Reilly v. Ninia, 81 A.D.3d 913, 915
- Fernandez v. Taping Expert, Inc., 210 A.D.3d 651, 651-652

OPINION

PER CURIAM.

Mainardi v Imperial Towers (2026 NY Slip Op 00125) Mainardi v Imperial Towers 2026 NY Slip Op 00125 Decided on January 14, 2026 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 January 14, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

PAUL WOOTEN WILLIAM G. FORD PHILLIP HOM, JJ. 2023-12175 (Index No. 151849/20) [*1]Diana Mainardi, appellant, v Imperial Towers, et al., respondents. Held, Held & Held (The Altman Law Firm, PLLC, Woodmere, NY [Michael T. Altman], of counsel), for appellant. Gerber Ciano Kelly Brady LLP (Kahana & Feld, LLP, New York, NY [Sean Harriton, Timothy R. Capowski, and Christopher R. Theobalt], 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, Richmond County (Ralph J. Porzio, J.), dated September 12, 2023. The judgment, upon a jury verdict on the issue of liability, is in favor of the defendants and against the plaintiff dismissing the complaint. ORDERED that the judgment is affirmed, with costs.

On May 31, 2020, the plaintiff visited friends on the second floor of an apartment complex owned by the defendant Imperial Towers, operated by the defendant Imperial Towers Condominium, and managed by the defendant Island Condo Management Corp. (hereinafter collectively the defendants).

On the day in question, the elevator at the complex was not working, and the plaintiff walked up the stairs to reach her friend's apartment. In order to leave the complex, the plaintiff used the same stairs to return to the first floor and exit the building.

The stairs were separated from the hallway of the second floor by a doorway, which opened up into an alcove, separated by a step down (hereinafter the alcove). The plaintiff testified that she opened the door to the alcove, stepped with her right foot down through the entryway, and then lost her balance and fell when she stepped down with her left foot.

On October 16, 2020, the plaintiff commenced this action against the defendants. After a liability trial, the jury unanimously determined that the defendants were negligent but that the defendants' negligence was not a substantial factor in causing the plaintiff's fall. Thereafter, the Supreme Court entered a judgment in favor of the defendants and against the plaintiff dismissing the complaint.

The plaintiff appeals. We affirm. The plaintiff's contentions that she was deprived of her right to a fair trial due to the partiality of the Supreme Court are unpreserved for appellate review (see *Fortune v New York City Hous. Auth.*, 201 AD3d 705, 708).

In any event, the plaintiff's contentions are without merit. "[A]ll litigants, regardless of the merits of their case, are entitled to a fair trial" (*Habenict v R.K.O. Theatres*, 23 AD2d 378, 379). "A trial court 'has broad authority to control the courtroom, rule on [*2]the admission of evidence, elicit

and clarify testimony, expedite the proceedings and to admonish counsel and witnesses when necessary" (*Ioffe v Seruya*, 134 AD3d 993, 995-996, quoting *Nunez v New York City Health & Hosps.*

Corp. [Elmhurst Hosp. Ctr.], 110 AD3d 686, 688). "A trial justice must maintain an atmosphere of impartiality," however, "[a] [t]rial [justice] is not reduced to such constraint that he [or she] may not make remarks on occurrences during the trial" (*Evans v New York City Tr. Auth.*, 179 AD3d 105, 113 [internal quotation marks omitted]).

Here, the plaintiff failed to demonstrate that she was treated disparately by the court or that her counsel was admonished outside of appropriate bounds. Furthermore, the Supreme Court providently exercised its discretion in admitting into evidence a photograph of the accident area (see *Giglio v Maher*, 282 AD2d 707, 707-708). Additionally, the evidence was insufficient to warrant a jury charge on the issue of failure to produce certain evidence at trial.

Accordingly, the plaintiff was not deprived of her right to a fair trial (see *Fortune v New York City Hous. Auth.*, 201 AD3d at 708). Under CPLR 4404(a), "the court may set aside a jury verdict and order a new trial where it finds that the verdict was contrary to the weight of the evidence" (*Madigan v Putnam County*, 230 AD3d 751, 753; see *Yankovitch v Fessel*, 170 AD3d 784, 785).

"A jury verdict may be set aside as contrary to the weight of the evidence only if 'the evidence so preponderated in favor of the [moving party] that the verdict could not have been reached on any fair interpretation of the evidence'" (*Pen v Wheels, Inc.*, 231 AD3d 848, 848, quoting *Lolik v Big V Supermarkets*, 86 NY2d 744, 746; see *Galeano v Giambrone*, 218 AD3d 745, 746-747).

"Whether a jury verdict should be set aside as contrary to the weight of the evidence does not involve a question of law, but rather requires a discretionary balancing of many factors" (*Williams v New York City Tr. Auth.*, 121 AD3d 780, 781). "It is within the province of the jury to determine issues of credibility, and great deference is accorded to the jury given its opportunity to see and hear the witnesses" (*Tsimbalenko v Irizarry*, 104 AD3d 842, 843, quoting *Palermo v Original California Taqueria, Inc.*, 72 AD3d 917, 918).

"A court must not interfere with a jury's fact-finding process merely because it disagrees with its findings or would have evaluated the witnesses' credibility differently and reached a contrary determination" (*Reilly v Ninia*, 81 AD3d 913, 915). "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 651, 651-652).

Contrary to the plaintiff's contention, there is a reasonable view of the evidence that supports the jury's determination that the defendants were negligent but that their negligence was not a substantial factor in causing the plaintiff's accident.

Here, the evidence indicates that the plaintiff lost her balance after having already been aware of the height differential, and that she admitted that her fall was her own fault. Accordingly, the jury's verdict was not contrary to the weight of the evidence (see *Madigan v Putnam County*, 230 AD3d at 753). BARROS, J.P., WOOTEN, FORD and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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