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As of: Dec 26, 2013

Carol Ann Francis, Appellant, v Leon D. Dematteis Associates, LLC, et al., Respondents, et al., Defendant. (Index No. 1442/05)

2011-00169, 2011-00171

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

99 A.D.3d 856; 951 N.Y.S.2d 906; 2012 N.Y. App. Div. LEXIS 6879; 2012 NY Slip Op 6916

October 17, 2012, Decided

SUBSEQUENT HISTORY: Leave to appeal denied by Carol Ann Francis v. Leon D. Dematteis Assoc., LLC, 2013 N.Y. LEXIS 802 (N.Y., Apr. 25, 2013)

HEADNOTES

Trial--Verdict--Setting Verdict Aside

COUNSEL: [***1] Michael H. Zhu, Esq., P.C., New York, N.Y., for appellant.

Gartner & Bloom, P.C., New York, N.Y. (Arthur P. Xanthos of counsel), for respondents, Leon D. Dematteis Associates, LLC, Ry Management Co., Inc., and L.I.R.A. Apartments Co., L.P. Faust Goetz Schenker & Blee LLP (Shaub, Ahmuty, Citrin & Spratt, LLP, Lake Success, N.Y. [Steven J. Ahmuty, Jr., Timothy R. Capowski, and Deirdre E. Tracey], of counsel), for respondent, Hazardous Elimination Corp.

JUDGES: PETER B. SKELOS, J.P., RUTH C. BALKIN, JOHN M. LEVENTHAL, JEFFREY A. COHEN, JJ. SKELOS, J.P., BALKIN, LEVENTHAL and COHEN, JJ., concur.

OPINION

[*856] [**906] In an action to recover damages for personal injuries, the plaintiff appeals, as [**907] limited by her brief, (1) from so much of an interlocutory judgment of the Supreme Court, Kings County (Kramer, J.), dated November 29, 2010, as, upon a jury verdict, is in favor of the defendants Leon D. Dematteis Associates, LLC, Hazardous Elimination Corp., and Ry Management Co., Inc., and against her on the issue of liability, and (2) from so much of a judgment of the same court dated December 3, 2010, as, upon the jury verdict, is in favor of the defendants Leon D. DeMatteis Associates, LLC, Hazardous Elimination [***2] Corp., and Ry Management Co., Inc., and against her dismissing the complaint insofar as asserted against those defendants, and awarded certain costs to the defendants Leon D. DeMatteis Associates, LLC, and RY Management Co.,

Inc.

Ordered that the appeal from the interlocutory judgment dated November 29, 2010, is dismissed, as that judgment was superseded by the judgment dated December 3, 2010; and it is further,

Ordered that the judgment dated December 3, 2010, is affirmed insofar as appealed from; and it is further,

Ordered that one bill of costs is awarded to the defendants appearing separately and filing separate briefs.

[*857] The plaintiff alleged that in 2004 the defendants caused her to sustain personal injuries by defectively remediating a mold condition in her apartment on Spring Street in Manhattan. After one defendant was awarded summary judgment and the Supreme Court granted the unopposed motion of another defendant for judgment as a matter of law at the close of the plaintiff's case at trial, the jury found in favor of the remaining defendants. The plaintiff contends, among other things, that the verdict was contrary to the weight of the evidence. We may not set aside a jury verdict [***3] as contrary to the weight of the evidence "unless the jury could not have reached the verdict by any fair interpretation of the evidence" (*Geary v Church of St. Thomas Aquinas*, 98 AD3d 646, 646, 950 NYS2d 163 [2012]; *see Nicastro v Park*, 113 AD2d 129, 133-134, 495 NYS2d 184 [1985]). In conducting our review, we accord great deference to a jury's credibility findings, including its determinations as to which expert to credit, because the jury is in a superior position to assess the witnesses (*see Geary v Church of St. Thomas Aquinas*, 98 AD3d at 647; *Bailey v Brookdale Univ. Hosp. & Med. Ctr.*, 98 AD3d 545, 546, 949 NYS2d 714 [2012]; *Saccone v Gross*, 84 AD3d 1208, 1208-1209, 923 NYS2d 878 [2011]). Here, contrary to the plaintiff's contention, the jury verdict was based on a fair interpretation of the evidence and, thus, was not contrary to the weight of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744, 746, 655 NE2 163, 631 NYS2d 122 [1995]; *Nicastro v Park*, 113 AD2d at 134).

The plaintiff's remaining contentions are without merit. Skelos, J.P., Balkin, Leventhal and Cohen, JJ., concur.