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FIND Request: 141 Misc. 2d 893

Supreme Court, Kings County, New York,
 Civil Term, Part 28.

Michael HOFFMAN, Plaintiff,

v.


CITY OF NEW YORK, Defendant.

Nov. 30, 1988.

Plaintiff brought personal injury action against municipality, which filed motion in limine to preclude plaintiff from introducing x-ray evidence. The Supreme Court, Kings County, Huttner, J., held that x-rays contained in plaintiff's medical records were admissible in personal injury accident, notwithstanding plaintiff's failure to comply with authentication and notice requirements of practice rule.

Motion denied.

West Headnotes

Evidence 157  **359(4)**

157 Evidence

157X Documentary Evidence

157X(C) Private Writings and Publications

157k359 Photographs and Other Pictures;

Sound Records and Pictures

157k359(4) k. Roentgen or X-Ray Process. Most Cited Cases

X-rays contained in plaintiff's medical records were admissible in personal injury action, notwithstanding plaintiff's failure to comply with authentication and notice requirements of practice rule, where medical records were themselves admissible as "business records." McKinney's CPLR 2306, 4518, 4532-a.

****342 *893** Peter L. Zimroth, Corp. Counsel, Brooklyn, for defendant.

Phillip M. Damashek, New York City, for plaintiff.

RICHARD D. HUTTNER, Justice.

In this personal injury action, defendant moves *in limine* during the damages portion of the bifurcated trial to preclude plaintiff from introducing into evidence x-rays which do not comply with the authentication and notice requirements enunciated in CPLR 4532-a. Given the dearth of case law, this ***894** court feels constrained to elaborate upon its ruling from the bench denying defendant's motion.

Rule 4532-a of the Civil Practice Law and Rules is not the only means by which x-rays may be admitted in evidence. The last sentence of CPLR 4532-a provides that failure to comply with the Rule's requirements shall not operate to prohibit the admissibility of an x-ray that is "otherwise admissible." Thus, where, as here, plaintiff asserts that the x-rays are part of his hospital records which are otherwise admissible as business records under CPLR 4518 and 2306, and which are present in court pursuant to defendant's own subpoena, literal compliance with the authenticating and notice requirements of CPLR 4532-a is clearly not required. *See*, McLaughlin, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 4532-a, 1988 Supp. Pamph, at 433; Dana v. Von Pichl, 39 A.D.2d 744, 332 N.Y.S.2d 368; c.f., Harth v. Nicholas Liakis & Son, Inc., 103 Misc.2d 217, 425 N.Y.S.2d 523. Indeed, if x-rays contained in the medical records pertain to diagnosis and treatment of plaintiff's alleged injuries it would be error to exclude them. Meyers v. Meyers, 265 App.Div. 939, 38 N.Y.S.2d 461; **343 Del Toro v. Carroll, 33 A.D.2d 160, 165, 306 N.Y.S.2d 95. To rule otherwise would subvert the salutary purpose of CPLR 4518, which is to obviate the calling of each employee who participated in making entries in business records. Spoar v. Fudjack, 24 A.D.2d 731, 263 N.Y.S.2d 340.

The requirements set forth in CPLR 4532-a merely afford an alternative method for admitting an x-ray into evidence without calling the radiologist who made it to authenticate it as being that of the party whose injury it is offered to prove, on notice to the party against whom it will be offered. Since an x-ray may be admitted either under the specific requirements of CPLR 4532-a, or, by virtue of the

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“otherwise admissible” exemption, (that is, authenticated pursuant to CPLR 4518 and 2306) defendant’s application herein must be denied.

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