

292 A.D.2d 263, 740 N.Y.S.2d 294, 2002 N.Y. Slip Op. 02305  
(Cite as: 292 A.D.2d 263, 740 N.Y.S.2d 294)

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
Supreme Court, Appellate Division, First Department,  
New York.  
Robert WILKINSON, Plaintiff-Appellant,  
v.  
BRITISH AIRWAYS, Defendant,  
and  
Aviations Safeguards, etc., Defendant-Respondent.

March 21, 2002.

Airport security company filed oral motion in limine to exclude videotape of deposition testimony given by medical expert witness for passenger who had brought personal injury action against company. The Supreme Court, New York County, Jose Padilla, J., granted motion, and after passenger conceded that absent testimony he could not make out a prima facie case, granted motion to dismiss. Company appealed. The Supreme Court, Appellate Division, held that: (1) motion in limine could be brought orally, and (2) while inadequacy of manner in which oath was administered required exclusion of videotape of expert's testimony, customer would be given one more opportunity to conduct deposition in accordance with oath requirements.


Reversed.

West Headnotes

**[1] Pretrial Procedure 307A** 

307A Pretrial Procedure  
307AI In General  
307Ak3 k. Motions in Limine; Preclusion of Evidence, Argument, or Reference. Most Cited Cases

There is no requirement that an in limine motion be made in writing and be in accordance with rule governing motion papers, and an oral motion in limine may properly be considered by court. McKinney's CPLR 2214.

**[2] Pretrial Procedure 307A** 

307A Pretrial Procedure

307AII Depositions and Discovery


307AII(C) Discovery Depositions

307AII(C)5 Use and Effect

307Ak201 Use

307Ak202 k. Admissibility in General. Most Cited Cases

Videotape of deposition of plaintiff's medical expert witness, in which oath was administered to expert by plaintiff's counsel, was not admissible during personal injury action.

**[3] Pretrial Procedure 307A** 

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(C) Discovery Depositions

307AII(C)3 Examination in General

307Ak151 k. In General. Most Cited

Cases

Inadmissibility of videotaped deposition of personal injury plaintiff's sole medical expert witness, who was not properly administered oath during deposition, and without whose testimony plaintiff could not make out prima facie case, did not warrant dismissal of action; rather, plaintiff would be given one final opportunity to conduct a proper deposition in conformity with oath requirements, with plaintiff covering expenses incurred by defendant in traveling to depose witness in his native United Kingdom. McKinney's CPLR 3113(a), par. 3.

**\*\*295** Robert M. Ginsberg, for Plaintiff-Appellant.

Andrew R. Scott, for Defendant-Respondent.

MAZZARELLI, J.P., ELLERIN, LERNER, RUBIN and MARLOW, JJ.

**\*264** Judgment, Supreme Court, New York County (Jose Padilla, J.), entered November 26, 2001, which, upon order, same court and Justice, entered October 4, 2001, granted defendant's motion in limine to preclude from evidence certain videotaped deposition testimony and, upon plaintiff's con-

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cession that it could not make out a prima facie case without the precluded testimony, dismissed the complaint, unanimously reversed, on the facts and in the exercise of discretion, without costs, the motion to dismiss denied and the complaint reinstated on condition that: (a) the depositions of plaintiff's medical witness shall be properly conducted, within 60 days from the service of a copy of this order with notice of entry, at the personal expense of plaintiff's counsel; and (b) plaintiff's counsel also pay a sum as reimbursement for expenses caused by the conduct of plaintiff's counsel to include airfare, one night hotel accommodations and \$1,000.00 for other expenses attendant upon the trip; and all such expenses shall not be chargeable to the client, but payable by plaintiff's counsel personally. Appeal from order, same court and Justice, entered October 4, 2001, unanimously dismissed, without costs, as subsumed in the appeal from the aforesaid judgment.

In this action to recover, *inter alia*, damages for personal injuries, plaintiff, a \*\*296 citizen of the United Kingdom, alleges in his complaint that on September 24, 1999, he was pushed through a security device adjacent to a checkpoint at the British Airways terminal in Kennedy Airport, thereby exacerbating an underlying neurological condition.

On the eve of trial, the court granted defendant Aviations Safeguards' oral motion *in limine* to preclude the introduction of the videotaped deposition testimony of plaintiff's sole medical witness taken in the United Kingdom pursuant to court order. The court found that counsel for plaintiff's counsel administered the oath to the witness after being cautioned by defendant's counsel, who objected to such procedure. Without this testimony, counsel for plaintiff conceded that he would not be able to make out a prima facie case. Defendant then moved to dismiss and the motion was granted.

[1] Contrary to plaintiff's contentions, there is no requirement that an *in limine* motion be made in writing and be in accordance with CPLR 2214. The court, therefore, properly considered defendant's oral application (*see generally, State of New York v. Metz*, 241 A.D.2d 192, 198, 671 N.Y.S.2d 79).

[2][3] Although the court properly determined that the videotaped deposition testimony is inadmissible, we afford the plaintiff a final opportunity to

conduct a proper deposition of its medical \*265 witness in conformity with the requirements of CPLR 3113(a)(3).

N.Y.A.D. 1 Dept., 2002.  
Wilkinson v. British Airways  
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