

Soriano v Inoa
2010 NY Slip Op 03843
Decided on May 6, 2010
Appellate Division, First Department
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Decided on May 6, 2010

Mazzarelli, J.P., Sweeny, Freedman, Richter, Manzanet-Daniels, JJ.

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[*1]Harry Soriano, Plaintiff-Appellant,

v

Rosa Inoa, et al., Defendants, The City of New York, Defendant-Respondent.

Pollack, Pollack, Isaac & DeCicco, New York (Michael H. Zhu of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York (Victoria Scalzo of counsel), for respondent.

Order, Supreme Court, Bronx County (Larry S. Schachner, J.), entered November 6, 2008, which denied plaintiff's motion to set aside a trial order dismissing the complaint, unanimously reversed, on the facts, without costs, the motion denied, the complaint reinstated, and the matter remanded for further discovery on the newly revealed material and for a new trial.

It is unclear from the trial record whether Dr. Gutstein was an expert witness as to

whom CPLR 3101(d) notice was required, or plaintiff's treating physician, as to whom no notice was required (*see e.g. Breen v Laric Entertainment Corp.*, 1 AD3d 298, 299-300 [2003]). Moreover, it is clear that the prejudice to defendants arose from the lack of proper authorizations for medical records and not from the report annexed to plaintiff's expert notice.

Accordingly, Gutstein's testimony as to causation should not have been precluded on the ground of plaintiff's late service of the notice.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 6, 2010

CLERK

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