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As of: September 23, 2021 1:04 PM Z

Guerra v. McBean

Supreme Court of New York, Appellate Division, First Department

April 9, 2015, Decided; April 9, 2015, Entered

14787N, 308845/12

Reporter

127 A.D.3d 462 *; 4 N.Y.S.3d 526 **; 2015 N.Y. App. Div. LEXIS 3012 ***; 2015 NY Slip Op 03046 ****

[****1] Victoria Guerra et al., Respondents, v Leslie McBean et al., Appellants.

Core Terms

examinations, defendants'

Headnotes/Summary

Headnotes

Disclosure—Medical Records and Reports—Presence of Plaintiff's Representative at Physical Examination

Counsel: [***1] Mauro Lilling Naparty LLP, Woodbury (Matthew W. Naparty of counsel), for appellants.

Alexander J. Wulwick, New York, for respondents.

Judges: Concur—Gonzalez, P.J., Mazzarelli, Saxe, Manzanet-Daniels, Clark, JJ.

Opinion

[*462] [**526] Order, Supreme Court, Bronx County (Laura G. Douglas, J.), entered on or about July 15, 2014, which denied defendants' motion to compel plaintiffs to appear for further orthopedic examinations, unanimously affirmed, without costs.

Defendants failed to establish that plaintiffs' representative's presence at their physical examinations deprived defendants of the ability to conduct meaningful examinations (see [CPLR 3121 \[a\]](#); [Tucker v Bay Shore Stor. Warehouse, Inc.](#), 69 AD3d 609, 609-610, 893 NYS2d 138 [2d Dept 2010]; cf. [Orsos v Hudson Tr. Corp.](#), 95 AD3d 526, 944 NYS2d 514 [1st Dept 2012] [court directed a second IME of plaintiff where

defendants' IME physician reflected a potential bias toward plaintiff by recommending that she treat with his partner after the litigation concluded]). Defendants' expert's lengthy reports relating to the examinations reflect that he was able to perform range of motion and other testing and issue unequivocal diagnoses, and gave no indication that further examinations were required (see [Bravo v Vargas](#), 113 AD3d 577, 579, 978 NYS2d 313 [2d Dept 2014]; [Jakubowski v Lengen](#), 86 AD2d 398, 400-402, 450 NYS2d 612 [4th Dept 1982] [defendant made no showing that presence of law clerk from plaintiff's counsel's office interfered with IME]; cf. [Chaudhary v Gold](#), 83 AD3d 477, 478, 921 NYS2d 219 [1st Dept 2011] [neuropsychological IME granted upon [***2] defendants' submission of supporting expert affidavit after plaintiff had undergone neurological and neuropsychiatric IMEs]). To the limited extent that questions were not answered during the examinations, the [*463] court appropriately directed plaintiffs to provide affidavits as to the missing responses. Concur—Gonzalez, P.J., Mazzarelli, Saxe, Manzanet-Daniels and Clark, JJ.

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