

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, SECOND DEPARTMENT**

Rodman v. Ardsley Radiology, P.C.

80 A.D.3d 598 (N.Y. App. Div. 2d Dep't 2011) · Decided January 11, 2011

SUMMARY

The Appellate Division reverses an order denying plaintiffs' motion to strike defendants' answers based on spoliation of evidence in a medical malpractice action. Although striking the answers was unwarranted because the plaintiffs were not entirely deprived of a means to prove their claims, the court directs that an adverse inference charge be given at trial concerning the defendants' unexplained loss of mammogram films.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Skelos, J.P.; Dickerson, J.; Belen, J.; Lott, J.
JURISDICTION	New York
DECIDED	January 11, 2011
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from the portion of an order denying their cross motion under CPLR 3126 to strike defendants' answers as a sanction for spoliation of evidence.
STANDARD OF REVIEW	Abuse of discretion and review as a matter of law concerning the sanction imposed for spoliation under CPLR 3126.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Rodman v. Ardsley Radiology, P.C., Joseph McCarthy, M.D.

TOPICS

sanctions discovery dispute medical malpractice evidence appellate procedure

PRACTICE AREAS

civil procedure evidence medical malpractice appellate procedure

QUESTIONS PRESENTED

1. Whether the unexplained loss of mammogram films warranted sanctions under CPLR 3126.
2. Whether the spoliation justified striking the defendants' answers or instead warranted an adverse inference charge at trial.

HOLDINGS

1. Yes. When a party negligently loses or intentionally destroys key evidence, the court may impose a sanction under CPLR 3126, and the defendants' unexplained loss of mammogram films warranted a sanction.
2. No. Striking the defendants' answers was not warranted because plaintiffs did not demonstrate that the spoliation left them prejudicially bereft of any means of proving their claims.
3. Yes. The appropriate sanction was an adverse inference charge concerning the defendants at trial.

KEY QUOTATIONS

“Under the common-law doctrine of spoliation, when a party negligently loses or intentionally destroys key evidence, the responsible party may be sanctioned under CPLR 3126” (80 A.D.3d at 598)

“the plaintiffs did not show that the spoliation left them “prejudicially bereft” of a means of proving their claims” (80 A.D.3d at 599)

FACTUAL BACKGROUND

The plaintiffs alleged that Ardsley Radiology, P.C., and Dr. Joseph McCarthy failed to properly read a mammogram and diagnose the injured plaintiff's breast cancer. The defendants lost the subject mammogram films, which they were statutorily obligated to maintain. The loss placed the plaintiffs at a significant disadvantage in proving essential elements of their malpractice claims, but the plaintiffs were not left completely without a means of proving those claims.

PROCEDURAL HISTORY

In a medical malpractice action, the Supreme Court, Westchester County, denied plaintiffs' cross motion to strike the answers of Ardsley Radiology, P.C., and Joseph McCarthy, M.D., based on the unexplained loss of mammogram films. The Appellate Division reversed in part, directing that an adverse inference charge be given at trial while declining to impose the more severe sanction of striking the answers.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The lower court was directed to give an adverse inference charge at trial pertaining to Ardsley Radiology, P.C., and Joseph McCarthy, M.D.; the request to strike their answers was otherwise denied.

CASES CITED

- Holland v. W.M. Realty Mgt., Inc., 64 A.D.3d 627, 629 (2009)
- Shayovich v. 800 Ocean Parkway Apt. Corp., 77 A.D.3d 814, 815-816 (2010)
- Zaytsev v. Zelman, 73 A.D.3d 909 (2010)
- Utica Mut. Ins. Co. v. Berkoski Oil Co., 58 A.D.3d 717, 718 (2009)
- Gotto v. Eusebe-Carter, 69 A.D.3d 566, 567-568 (2010)
- Lichtenstein v. Fantastic Mdse. Corp., 46 A.D.3d 762, 764 (2007)
- Coleman v. Putnam Hosp. Ctr., 74 A.D.3d 1009 (2010)
- Tapia v. Royal Tours Serv., Inc., 67 A.D.3d 894 (2009)

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