

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21821
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_____AD3d_____

Argued - December 9, 2008

STEVEN W. FISHER, J.P.
HOWARD MILLER
EDWARD D. CARNI
RUTH C. BALKIN, JJ.

2007-11696

DECISION & ORDER

Alla Kotlyar, respondent, v Emilia Strogov, etc.,
appellant.

(Index No. 27984/02)

Michael H. Zhu, New York, N.Y., for appellant.

Bonina and Bonina, P.C., Brooklyn, N.Y. (Tyrone F. Sergio of counsel), for
respondent.

In an action to recover damages for medical malpractice and lack of informed consent,
the defendant appeals from an order of the Supreme Court, Kings County (Marano, J.H.O.), dated
October 26, 2007, which, after an inquest on the issue of damages, awarded the plaintiff \$50,000.

ORDERED that on the Court's own motion, the appellant's notice of appeal is treated
as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is
further,

ORDERED that the order is reversed, on the law, without costs or disbursements, and
the matter is remitted to the Supreme Court, Kings County, for a new inquest on the issue of
damages.

In her complaint, the plaintiff alleged damages which included pain and suffering, lost

earnings, and medical expenses. After an inquest on the issue of damages, the court awarded the plaintiff \$50,000, without specifying whether the award was for pain and suffering, lost earnings, and/or medical expenses. Under the circumstances, and given the speculative nature of much of the plaintiff's proof at the inquest (*see Guerrero v Djuko Realty*, 300 AD2d 542, 543; *Schwartzman v Friedler*, 279 AD2d 517), and the court's error in admitting uncertified medical records into evidence (*see CPLR 4518[c]*, 2106; *Abbas v Cole*, 7 AD3d 649, 649-650; *cf. Grasso v Angerami*, 79 NY2d 813, 814-815; *Elder v Stokes*, 35 AD3d 799; *Nkhereanye v Hillaire*, 35 AD3d 419, 420), we remit the matter to the Supreme Court, Kings County, for a new inquest on the issue of damages.

FISHER, J.P., MILLER, CARNI and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court