NY CLS CPLR § 4547

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New York

Consolidated Laws Service ***>***

Civil Practice Law And Rules (Arts. 1 — 100) ***>***

Article 45 Evidence (§§ 4501 — 4551)

§ 4547. Compromise and offers to compromise.

Evidence of (a) furnishing, or offering or promising to furnish, or (b) accepting, or offering or promising to accept, any valuable consideration in compromising or attempting to compromise a claim which is disputed as to either validity or amount of damages, shall be inadmissible as proof of liability for or invalidity of the claim or the amount of damages. Evidence of any conduct or statement made during compromise negotiations shall also be inadmissible. The provisions of this section shall not require the exclusion of any evidence, which is otherwise discoverable, solely because such evidence was presented during the course of compromise negotiations. Furthermore, the exclusion established by this section shall not limit the admissibility of such evidence when it is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay or proof of an effort to obstruct a criminal investigation or prosecution.

History

Add, L 1998, ch 317, § 1, eff July 14, 1998; amd, L 1999, ch 56, § 1, eff May 25, 1999.

Annotations

Notes to Decisions

In negligence action for slip and fall, court properly precluded plaintiff from questioning insurance representative concerning payment to plaintiff for medical expenses. Wright v Saeed Deli & Grocery, 275 A.D.2d 999, 713 N.Y.S.2d 639, 2000 N.Y. App. Div. LEXIS 9515 (N.Y. App. Div. 4th Dep't 2000), app. denied, 96 N.Y.2d 701, 722 N.Y.S.2d 793, 745 N.E.2d 1015, 2001 N.Y. LEXIS 35 (N.Y. 2001).

Buyers' email, sent after the date of the scheduled contract closing, was not inadmissible in the seller's summary judgment proceeding in its breach of contract case because the buyers admitted liability; N.Y. C.P.L.R. 4547 applied only to offers to compromise a claim which was disputed. Java Enters., Inc. v Loeb, Block & Partners LLP, 48 A.D.3d 383, 853 N.Y.S.2d 292, 2008 N.Y. App. Div. LEXIS 1774 (N.Y. App. Div. 1st Dep't 2008).

Trial court in an insurance liquidation proceeding properly denied a reinsurer's motion for an order precluding the liquidator and the insurer's policyholders from introducing evidence of settlements entered into by the reinsurer as a direct insurer in other proceedings; the proffered evidence was relevant inasmuch as it was offered to refute the reinsurer's claims by showing that the reinsurer, as a direct insurer in other proceedings, utilized the claims handling methodology it sought to challenge as a reinsurer in this proceeding. Matter of Midland Ins. Co., 87 A.D.3d 487, 929 N.Y.S.2d 116, 2011 N.Y. App. Div. LEXIS 6206 (N.Y. App. Div. 1st Dep't 2011).

In a custody dispute, the trial court's references to settlement attempts were not improper because the court found that the mother's attitude toward settlement implicated her parental fitness and was therefore directly relevant to its analysis of the child's best interests. S.A. v R.H., 181 A.D.3d 520, 120 N.Y.S.3d 319, 2020 N.Y. App. Div. LEXIS 1988 (N.Y. App. Div. 1st Dep't 2020).

Defense counsel's inquiry into the injured parties' out of court settlement with the driver was improper because it attempted to establish liability or to mitigate damages; the injured parties were denied a fair trial since the jury could have found otherwise had the settlement not been disclosed. Andresen v Kirschner, 190 Misc. 2d 779, 742 N.Y.S.2d 474, 2001 N.Y. Misc. LEXIS

1247 (N.Y. Sup. Ct. 2001), rev'd, 297 A.D.2d 235, 746 N.Y.S.2d 258, 2002 N.Y. App. Div. LEXIS 7945 (N.Y. App. Div. 1st Dep't 2002).

Trial court, in considering the propriety of an award for future pain and suffering in a medical malpractice case, disregarded defense counsel's argument regarding amounts mentioned during settlement discussions, because such an argument was deemed highly improper on a motion to set aside the verdict or any similar type motion. Harding v Onibokun, 828 N.Y.S.2d 780, 14 Misc. 3d 790, 2006 N.Y. Misc. LEXIS 4104 (N.Y. Sup. Ct. 2006).

Plaintiffs filed suit seeking a declaration that the city's mapping of a street (which had never been built) across their lot was void. As the city had granted a consent judgment to the owner of the adjoining lot, declaring that the mapping of the street across her lot was void, the court was entitled to consider that consent judgment to determine whether the city acted arbitrarily and capriciously by denying plaintiffs the same relief. Chevere v City of New York, 920 N.Y.S.2d 572, 31 Misc. 3d 337, 2010 N.Y. Misc. LEXIS 6084 (N.Y. Sup. Ct. 2010).

In photography clients' breach of contract action against a photographer that lost some of their wedding photographs due to the failure to properly transfer them from the camera to the computer, the photographer's email that offered to re-shoot the lost photographs was an offer of settlement that could not be considered an admission of liability under N.Y. C.P.L.R. 4547; moreover, the clients never accepted the offer. Whalen v Villegas, 968 N.Y.S.2d 343, 40 Misc. 3d 310, 2013 N.Y. Misc. LEXIS 1324 (N.Y. Dist. Ct. 2013).

Where a guardian showed that the depositor established a joint account for convenience purposes and had no intention of conferring a present beneficial interest on the other joint tenants, the presumption of joint tenancy under N.Y. Banking Law § 675 was effectively rebutted; the fact that the court improperly considered one party's attorney's letter as an admission of fact in making its determination, pursuant to N.Y. C.P.L.R. 4547 that the funds from the account were to be turned over to another was held harmless where there were numerous other factors in the record that supported the court's determination pursuant to N.Y. Mental Hyg.

Law § 81.44. Boychuk v Weinstein (In re Hayevsky), 302 A.D.2d 524, 757 N.Y.S.2d 47, 2003 N.Y. App. Div. LEXIS 1601 (N.Y. App. Div. 2d Dep't 2003).

Trial court erred in denying defendants' motion to set aside a jury verdict in favor of a doctor in a medical malpractice action pursuant to N.Y. C.P.L.R. 4404(a), as the trial court erred in permitting the cross-examination of the patient with respect to settlements with former defendants involved in the diagnosis and treatment of the patient, which was not permissible under N.Y. C.P.L.R. 4547. Stevens v Atwal, 30 A.D.3d 993, 817 N.Y.S.2d 469, 2006 N.Y. App. Div. LEXIS 7644 (N.Y. App. Div. 4th Dep't 2006).

In a summary judgment proceeding, it was error to strike an exchange of emails between counsel for the parties pursuant to N.Y. C.P.L.R. 4547, as the substance thereof did not involve a settlement or compromise. Nineteen Eighty-Nine, LLC v Icahn, 96 A.D.3d 603, 947 N.Y.S.2d 450, 2012 N.Y. App. Div. LEXIS 4959 (N.Y. App. Div. 1st Dep't 2012).

Research References & Practice Aids

Jurisprudences:

58 NY Jur 2d Evidence and Witnesses § 298. .

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4547, Compromise and Offers to Compromise.

Matthew Bender's New York AnswerGuides:

Lexis Nexis AnswerGuide New York Civil Disclosure § 11.05. Withholding Information Based Upon Miscellaneous Statutory Restrictions on Disclosure.

Matthew Bender's New York Evidence:

3 Bender's New York Evidence § 153.07. Offers of Compromise or to Pay Expenses.

Forms:

Bender’s Forms for the Civil Practice Form No. CPLR 4547:1.

LexisNexis Forms FORM 75-CPLR 4547:1.—Affirmation in Opposition to Motion to Set Aside Jury Verdict on Ground Evidence of Settlement Improperly Admitted at Trial.

LexisNexis Forms FORM 521-12-16.—Notice of Motion ***In Limine*** to Bar Evidence of Offer of Compromise.

Hierarchy Notes:

NY CLS CPLR, Art. 45

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