

A plaintiff has sued a defendant in federal court, alleging that the defendant knowingly pursued the plaintiff for payment of debts in violation of an automatic bankruptcy stay. The defendant has moved for summary judgment, arguing that he had no notice of the plaintiff's bankruptcy. In opposing the defendant's motion for summary judgment, the plaintiff offers a copy of the local newspaper that contains a front-page story about the plaintiff's petition for bankruptcy, along with evidence that the defendant is a daily subscriber to the newspaper. The defendant objects to admission of the newspaper story.

Is the newspaper story admissible?

- A. No, because the plaintiff has not offered proper authentication of the story. (2%)
- B. No, because the story constitutes hearsay not within any exception. (3%)
- C. Yes, because the story satisfies the past recollection recorded exception to the hearsay rule. (1%)
- D. Yes, because the newspaper is self-authenticating and the story is not offered for its truth. (93%)

Correct

93% Answered correctly

02 mins, 06 secs Time Spent

2023 Version

Explanation:

Self-authenticating evidence

(FRE 902)

Public documents with official's signature & certification by second official or seal

Certified copies of public records & records of regularly conducted activities

Newspapers, periodicals & official publications

Documents with trade inscription

Acknowledged documents

Commercial paper with signature & related documents

FRE = Federal Rule of Evidence.

Tangible evidence must be authenticated before it can be admitted. This generally requires that the proponent produce evidence (eg, testimony) sufficient to support a finding that the thing is what the proponent claims it to be. However, some tangible evidence is **self-authenticating** and therefore admissible without additional evidence of authenticity. This includes **printed materials** purporting to be a **newspaper or periodical** (as seen here) **(Choice A)**. Therefore, the newspaper *is* properly authenticated.

However, properly authenticated evidence is still subject to exclusion under other evidentiary rules. For example, the **rule against hearsay** bars admission of **out-of-court statements** offered to **prove the truth of the matter asserted** therein unless an **exclusion or exception** applies. But statements offered for **some other purpose**—eg, to show that a party had **notice** of a relevant fact or condition—are **not hearsay** and are not subject to this rule.

Here, the newspaper story does not constitute hearsay because it is not being offered for its truth **(Choice B)**. It is instead being offered to prove that, contrary to the defendant's assertion, the defendant had notice of the plaintiff's bankruptcy. Therefore, the newspaper story is admissible.

(Choice C) The past recollection recorded hearsay exception allows a record to be read into evidence if it (1) concerns a matter the witness once knew but cannot recall at trial, (2) was made or adopted by the witness while fresh in his/her mind, and (3) accurately reflects the witness's personal knowledge. But since the newspaper story was not offered for its truth (ie, is not hearsay), it need not satisfy this hearsay exception to be admissible.*

*If the newspaper story was hearsay, then the plaintiff could not rely on the past recollection recorded hearsay exception because the criteria for that exception are not met.

Educational objective:

Printed materials purporting to be a newspaper or periodical are self-authenticating. And an out-of-court statement is not hearsay if it is offered for a purpose other than to prove the truth of the matter asserted.

References

Fed. R. Evid. 902 (listing self-authenticating evidence).

Fed. R. Evid. 802 (setting forth the rule against hearsay).

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