Golden Stone Trading, Inc., Appellant, v Wayne Electro Systems, Inc., etc., et al., Respondents, et al., Defendants. (Index No. 7260/06)

2008-06579, 2009-01873

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

67 A.D.3d 731*; *889 N.Y.S.2d 72*; *2009 N.Y. App. Div. LEXIS 8025*; *2009 NY Slip Op 8177

November 10, 2009, Decided

HEADNOTES

Negligence--Exemption from Liability for Negligence

COUNSEL: [***1] Joel Lutwin, New York, N.Y. (Aaron Lebenger and Seligson, Rothman & Rothman [Martin S. Rothman and Alyne I. Diamond], of counsel), for appellant.

Kral, Clerkin, Redmond, Ryan, Perry & Girvan, LLP, Mineola, N.Y. (Nicole Licata-McCord of counsel), for respondent Wayne Electro Systems, Inc.

Kirschenbaum & Kirschenbaum, Garden City, N.Y. (Paul J. Tramontano and Kenneth Kirschenbaum of counsel), for respondent Affiliated Central, Inc.

JUDGES: FRED T. SANTUCCI, J.P., CHERYL E. CHAMBERS, L. PRISCILLA HALL, SHERI S. ROMAN, JJ. SANTUCCI, J.P., CHAMBERS, HALL and ROMAN, JJ., concur.

OPINION

[*731] [**73] In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from (1) an order of the Supreme Court, Queens County (Dorsa, J.), dated May 16, 2008, which granted the motion of the defendant Affiliated Central, Inc., for summary judgment dismissing the complaint insofar as asserted against it, and (2) an order of the same court, also dated May 16, 2008, which granted the motion of the defendant Wayne Electro Systems, Inc., for summary judgment dismissing the complaint insofar as asserted against it.

Ordered that the orders are affirmed, with one bill of costs.

The plaintiff and the [***2] defendant Wayne Electro Systems, Inc. (hereinafter Wayne), entered into a contract which provided, among other things, for the leasing, installation, and monitoring of an alarm system in the plaintiff's commercial premises. Wayne had previously engaged the defendant Affiliated Central, Inc. (hereinafter Affiliated), as its subcontractor to perform [*732] alarm monitoring services, and the plaintiff, Wayne, and Affiliated entered into an Alarm Monitoring Service Agreement (hereinafter the Affiliated contract). On or about January 23, 2006, the plaintiff's commercial premises were burglarized. The plaintiff commenced this action against, among others, Wayne and Affiliated, interposing causes of action against Wayne and Affiliated alleging negligence, gross negligence, breach of contract, and breach of warranty.

Both Wayne and Affiliated moved separately for summary judgment dismissing the complaint insofar as asserted against each of them. Each argued, inter alia, that it was exempted from liability for its own negligence, breach of contract, and breach of warranty by the terms of its respective contract with the plaintiff. They further argued that the plaintiff had not demonstrated a cause [***3] of action alleging gross negligence.

Contractual provisions in a burglar alarm contract absolving a party from its own negligence generally will be enforced; however, those provisions which purport to shield the burglar alarm company from gross negligence will not (*see Colnaghi, U.S.A. v Jewelers Protection Servs., 81 NY2d 821, 823-824, 611 NE2d 282, 595 NYS2d 381 [1993]*;

Sommer v Federal Signal Corp., 79 NY2d 540, 554, 593 NE2d 1365, 583 NYS2d 957 [1992]; *Aphrodite Jewelry v D&W Cent. Sta. Alarm Co., 256 AD2d 288, 289, 681 NYS2d 305 [1998]*; *Hartford Ins. Co. v Holmes Protection Group, 250 AD2d 526, 673 NYS2d 132 [1998]*).

Contrary to the plaintiff's contention, it did not allege conduct by either Wayne or Affiliated which rose to the level of gross negligence and, thus, the causes of action interposed against them alleging ordinary negligence are barred by the provisions in each contract absolving Wayne [**74] and Affiliated, respectively, from their own negligence (*see Colnaghi, U.S.A. v Jewelers Protection Servs., 81 NY2d at 823-824*; *Hartford Ins. Co. v Holmes Protection Group, 250 AD2d at 526*; *Aphrodite Jewelry v D&W Cent. Sta. Alarm Co., 256 AD2d at 289*).

Similarly, the causes of action alleging breach of contract and breach of warranty against Wayne and Affiliated also are barred by provisions in [***4] the respective contracts (*see Aphrodite Jewelry v D&W Cent. Sta. Alarm Co., 256 AD2d at 289*).

" 'A party who executes a contract is presumed to know its contents and to assent to them' [and] [a]n inability to understand the English language, without more, is insufficient to avoid this general rule" (*Holcomb v TWR Express, Inc., 11 AD3d 513, 514, 782 NYS2d 840 [2004]*, quoting *Moon Choung v Allstate Ins. Co., 283 AD2d 468, 468, 724 NYS2d 882 [2001]*; *see Pimpinello v Swift & Co., 253 NY 159, 162-163, 170 NE 530 [1930]*; *Sofio v Hughes, 162 AD2d 518, 520, 556 NYS2d 717 [1990]*). Although Guo Hua Lin, the plaintiff's president and sole [*733] shareholder (hereinafter its president), signed both the Wayne and Affiliated contracts, he averred, in an affidavit, that he was unable to read or speak English, or understand the contracts. However, the plaintiff neither showed that its president made any reasonable effort to have the contracts read to him, nor demonstrated that any agent of either Wayne or Affiliated, or any other person, misrepresented the contents of the contracts to him. Accordingly, the plaintiff may not rely on its president's inability to speak English to invalidate the contracts (*see e.g. Holcomb v TWR Express, Inc., 11 AD3d at 514*; *Sofio v Hughes, 162 AD2d at 520*).

The [***5] plaintiff's remaining contentions are without merit. Santucci, J.P., Chambers, Hall and Roman, JJ., concur.