

Lubell v Samson Moving & Storage, Inc.

2001 NY Slip Op 30026(U)

April 11, 2001

Supreme Court, New York County

Docket Number: 0604623/4623

Judge: Walter B. Tolub

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WALTER B. TOLUB
Justice

PART 15

Lubell, Doris

INDEX NO.

604623/98

MOTION DATE

- v -

MOTION SEQ. NO.

03

Samson Moving & Storage

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for

Dismiss Action

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided in accordance with the accompanying memorandum decision and order.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 04/11/01

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

WALTER B. TOLUB J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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DORIS LUBELL,

Plaintiff,

-against-

SAMSON MOVING & STORAGE, INC.,

Defendant.

Index No. 604623/98

Mtn Seq. No. 003

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WALTER B. TOLUB, J.:

Defendant Samson Moving & Storage moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint.

This action arises out of the defendant's storage of plaintiff's property in its warehouse. The plaintiff retained the defendant to move her personal belongings into the defendant's storage facility (Opposition Papers, Ex. C). Upon delivery to the defendant's storage facility on November 11, 1990, the plaintiff's husband conducted an inventory and inspection of the goods (Id., Ex. D). That exhibit indicates that the items sustained varying degrees of damage. In connection with the storage of the plaintiff's property, plaintiff's husband executed a storage contract, which provided for a monthly storage fee of \$135.31 (Id., Ex. F).

On May 20, 1998, approximately eight years later, the plaintiff went to the defendant's warehouse to retrieve her property. She alleges that her property was either missing or

severely damaged (Lubell Aff., ¶¶ 6-9). Thereafter, the plaintiff commenced this action against the defendant for negligence and breach of contract.

The defendant contends that it is entitled to summary judgment dismissing the complaint because the plaintiff allegedly acknowledged that the property had no value. The defendant relies on the affidavit of its president, Moshe Deutsch, to support its contention. In his affidavit, Mr. Deutsch states that "[i]n the shed [located in the plaintiff's backyard] were a number of paintings" and that when he inquired about them the plaintiff told him "not to worry about the paintings" and "just move those items into storage" (Deutsch Aff., ¶ 6). Mr. Deutsch further states that he "offered to wrap the paintings, but plaintiff declined saying that special handling was not necessary" (Id.). Assuming the truth of statements, they, standing alone, do not support the defendant's contention that the plaintiff "acknowledged" that the property placed in storage had no value. Indeed, credibility issues exist in light of the plaintiff's and her husband's statements in their affidavit disputing the defendant's assertion that there was an "acknowledgment" that the property was worthless (see, Opposition Papers).

The defendant next argues that its liability should be limited to thirty cents per pound pursuant to the storage contract. This argument is unavailing. Here, the defendant

provided two types of services: transportation versus storage. The liability limitations that it seeks to impose on the plaintiff apply only to claims arising out of its transportation of the plaintiff's property (Opposition Papers, Exs. C and E). Indeed, both the language in both documents indicate that they were bills of lading for shipping and transporting the plaintiff's property. This action is for damages arising out of the defendant's storage of the plaintiff's property. As for the storage services, a review of the storage contract reveals that the signature line for the liability limitation is blank (Opposition Papers, Ex. F). Thus, the defendant's liability is not limited to thirty cents per pound.

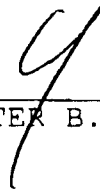
Accordingly, the defendant's motion for summary judgment is denied.

Counsel are directed to appear for a pre-trial conference in IA Part 15 (Room 335, 60 Centre Street) on May 4, 2001 at 11 a.m. for the purpose of resolving any remaining discovery issues and setting a trial date for this action.

This constitutes the decision and order of the Court.

Dated:

4/11/01



HON. WALTER B. TOLUB, J.S.C.