

**Santos v Inter Trans Ins. Servs., Inc.**

2008 NY Slip Op 32302(U)

August 12, 2008

Supreme Court, New York County

Docket Number: 0104201/2006

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

JUSTIN JULIUS SANTOS

INDEX NO.

104201/08

Plaintiff,

-v-

INTER TRANS INSURANCE SERVICES, INC.,  
AMERICAN INTERNATIONAL GROUP and  
KEY MOVING & STORAGE, INC.,

MOTION DATE

MOTION SEQ. NO.

001

Defendant.

MOTION CAL. NO.

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

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

**IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION**

**FILED**  
AUG 19 2008  
COUNTY CLERK'S OFFICE  
NEW YORK  
IS DECIDED

Dated: 8/19/08

WALTER B. TOLUB, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

-----x  
JUSTIN JULIUS SANTOS

Plaintiff,

Index No. 104201/2006  
Mtn Seq. 001

-against-

INTER TRANS INSURANCE SERVICES, INC.,  
AMERICAN INTERNATIONAL GROUP and  
KEY MOVING & STORAGE, INC.,

Defendant.  
-----x

**WALTER B. TOLUB, J.:**

This is Key Moving & Storage Inc's (Key Moving) motion for partial summary judgment limiting its maximum liability to Plaintiff to sixty cents (\$0.60) per pound per article.

Facts

The facts are largely undisputed. Plaintiff was living in Brooklyn, New York when he decided that he wanted to move to Irvine, California. Plaintiff hired Key Moving to pack his photography prints and furnishings, keep them in storage at their storage facility in the Bronx for two months, and then transport them to California.

Prior to the actual move, Plaintiff purchased moving insurance from American International Group (AIG). Inter Trans Insurance Services, Inc. (ITI) is AIG's claims adjuster for the policy Plaintiff purchased. Plaintiff declared the value of the items he needed shipped to be \$269,700 and paid a \$1,618.20

**FILED**

AUG 19 2008

COUNTY CLERK'S OFFICE  
NEW YORK

premium.

Plaintiff also signed a contract with Key Moving for the cost of packing, storing and transporting his household goods. The terms and conditions of the shipment were also sent to the Plaintiff. Included in those terms and conditions was a standard moving valuation of \$0.60 per pound per article for property loss or damage, with the option to obtain additional valuation of the goods. In an e-mail dated August 9, 2005, Plaintiff responded "I agree and accept the Terms and Conditions."

Although it is unclear when and where, Plaintiff's goods were lost while in the care of Key Moving and multiple items arrived in California damaged. When Plaintiff attempted to make a claim with ITI and AIG, he claims that he was advised that he had to prove ownership and value of the insured goods. Thereafter, ITI denied Plaintiff's claims.

Plaintiff claims that Key Moving was grossly negligent in packing, storing, transporting and unpacking his goods. By this motion, Key Moving seeks partial summary judgment limiting Plaintiff's claims against it to \$0.60 per pound per item.<sup>1</sup> Plaintiff argues that since Key Moving was grossly negligent, the \$0.60 limitation found in the contract is not binding.

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<sup>1</sup>Plaintiff also made, albeit late, additional requests for certain damaged items that Key Moving sought to dismiss. However, that portion of Defendant's motion is rendered moot since Plaintiff has withdrawn those requests.

### Discussion

Plaintiff argues that under New York law, Key West may not enforce the contractual limitation of liability based on its alleged gross negligence in packing, storing and transporting the shipment. Plaintiff's argument fails since federal precedents establish that state law claims, including claims of gross negligence, are preempted by the Carmack Amendment to the ICC Termination Act of 1995 (ICCTA), 49 USC §14706.

The United State Supreme Court has established that the Carmack Act's purpose was to abolish multi-state legal patchwork governing interstate liability (Adams Express Co. v. Croninger, 226 US 491 [1913]). The national law is paramount and supercedes all state laws as to rights, liabilities and exceptions created by such transactions (Id.) The Carmack Amendment removes uncertainty surrounding a carrier's liability when damage occurs to the shipper's interstate shipment (Hughes v. United Van Lines, 829 F.2d 1407 [7<sup>th</sup> Cir. 1987]).

Pursuant to the ICCTA, an interstate motor carrier may limit its liability "to a value established by written or electronic declaration of the shipper" (49 USC §14706 [C][1][a]). Unlike New York law, the ICCTA does not provide for a "gross negligence" exception to a contractual limitation of liability. It follows that Key Moving's limitation of liability to \$0.60 is valid and enforceable.

Accordingly, it is

ORDERED that Key Moving's motion for partial summary judgment limiting its maximum liability to Plaintiff to sixty cents (\$0.60) per pound per article is granted; and it is further

ORDERED that the portion of Key Moving's motion to dismiss in all other respects is rendered moot as Plaintiff has withdrawn its demands for further damages.

Counsel for the parties are directed to appear on September 12, 2008 at 11:00 AM in Room 335 at 60 Centre Street for a Preliminary Conference.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 8/12/08

*W*

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

**FILED**  
AUG 19 2008  
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