

Key Equip. Fin. Inc. v South Shore Imaging, Inc.
2008 NY Slip Op 32317(U)
August 18, 2008
Supreme Court, Richmond County
Docket Number: 0100753/2005
Judge: Joseph J. Maltese
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

**Index No.100753/05
Motion No.:003, 004,
005**

KEY EQUIPMENT FINANCE INC.,

Plaintiff

DECISION & ORDER

against

HON. JOSEPH J. MALTESE

**SOUTH SHORE IMAGING, INC.,
RONALD PANDOLFINI,
JASON PANDOLFINI, and
JOSEPH ROMAGNOLO**

Defendants

The following items were considered in the review of this motion and cross motions for summary judgment.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Notice of Cross-Motion and Affidavits Annexed	2,3
Answering Affidavits	4, 5
Exhibits	Attached to Papers
Memorandum of Law	6

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Defendants South Shore Imagining, Inc. (“South Shore”) and Joseph Romagnolo (“Romagnolo”), along with co-defendants Jason Pandolfini (“Jason”) and Ronald Pandolfini a/k/a Ron (“Ronald”), move this court pursuant to *CPLR* § 3212 for an order granting summary judgment in defendants favor on plaintiff’s fifth, sixth and seventh causes of action. Plaintiff cross-moves pursuant to *CPLR* § 3212 for an order granting summary judgment in its favor for the same causes of action. The plaintiff’s motion is granted in part and denied in part.

Facts

This action arises out of a contract dispute wherein plaintiff argues that defendants personally guaranteed a lease agreement between it and defendant South Shore. Defendants, Romagnolo, Jason and Ron contend that they never signed a personal guarantee in their individual capacity. On January 25, 2006 this court denied plaintiff’s motion for summary

judgment, ordering “. . . that the plaintiff’s motion for summary judgment is denied in its entirety.” Additionally, this court held:

In this action, the parties signed the pre-printed standardized agreement indicating that they signed in their corporate positions as president, vice president and treasurer. Therefore, they cannot be held personally liable for the debts owed by the corporation.

Subsequently, plaintiff appealed that decision to the Appellate Division, Second Department, which reversed in part and affirmed in part. Specifically, the Appellate Division reversed this court’s court denying summary judgment to plaintiff on its first, second and third causes of action and granted summary judgment in favor of plaintiff. The Appellate Division was silent concerning that portion of this court’s decision that held that the parties signed the lease in their corporate capacities. With respect to that branch of plaintiff’s summary judgment motion dealing with its fifth, sixth and seventh causes of action, the Appellate Division upheld this court’s denial of its motion for summary judgment. Furthermore, the Appellate Division made no reference to this court’s holding that the individual defendants are exempt from personal liability as they signed the lease agreement in their capacity as corporate officers. The individual defendants now move for an order granting summary judgment in their favor. They argue that the Appellate Division rejected the arguments of plaintiff with respect to individual liability by virtue of their personal guarantees. Plaintiff opposes their motions and contends that subsequent to the decision of the Appellate Division on April 10, 2007 the factual landscape of the case changed. In so arguing the plaintiff cites the Appellate Division’s closing paragraph in its decision that states:

. . . the Supreme Court properly denied those branches of the plaintiff’s motion which were for summary judgment on its fifth, sixth, and seventh causes of action asserted against the individual defendants, as issues of fact are presented.¹

Based on this language the plaintiff noticed the individual defendants to submit to depositions. In response the plaintiff conducted depositions of defendants Jason and Ronald, while defendant

¹ *Id.*

Romagnolo refused to participate. Plaintiff contends that based on the testimony of Jason and Ronald there are no longer issues of fact and it is entitled to summary judgment.

Discussion

A trial court is governed by the common law concept of *stare decisis* when applying the decisions of appellate courts. In this case, the plain language of the Appellate Division's decision states that the only portion of this court's January 25, 2006 decision that it overturned related only to the first three causes of action brought by the plaintiff. Furthermore, the Appellate Court affirmed the remainder of the decision.

This court agrees with the individual defendants argument that the plaintiff's motion is barred by the doctrine of the law of the case. The Appellate Division, Second Department held in *Sterngass v. Town Board of Town of Clarkstown*, that:

. . . judicial determinations made during the course of a litigation before final judgment is entered may have preclusive effect provided that the parties had a full and fair opportunity to litigate the initial determination.²

In this matter, the plaintiff had an opportunity to appeal this court's holding that the individual defendants signed the lease agreement in their capacity as corporate officers. On appeal, the Appellate Division reversed only that portion of this court's decision dealing with the corporate entity South Shore. While the Appellate Division referenced issues of fact concerning that portion of the decision it affirmed, it did not modify any part of the this court's prior holding as it related to the individual defendants. However, subsequent to the Appellate Division's order defendants Ronald Pandolfini and Jason Pandolfini submitted to depositions.

² *Sterngass v. Town Bd. of Town of Clarkstown*, 43 AD3d 1037 [2d Dep't. 2007].

While the plaintiff conducted depositions of two of the individual defendants, based on the closing paragraph of the Appellate Division's opinion that stated:

. . . the Supreme Court properly denied those branches of the plaintiff's motion which were for summary judgment on its fifth, sixth, and seventh causes of action asserted against the individual defendants, as issues of fact are presented.³

In recognizing outstanding issues of fact the noticing and conducting of depositions of the individual defendants was appropriate. The testimony taken at the deposition of these two individual defendants changed the factual landscape of this case. As such, this court cannot be bound to the decision it rendered on January 25, 2006.

During the deposition of Ronald Pandolfini the following exchange took place:

Q. I'm going to show you what has been previously marked as Plaintiff's Exhibit 1 for identification. At the top it's captioned, 'Equipment Schedule to Master Lease Agreement.' Take a look at that document and when you're ready, let me know.

A. Okay.

Q. Do you recognize that document?

A. Yes.

Q. Is that the equipment schedule for the master lease agreement for the Konica equipment?

A. That's what it states, yes.

Q. Does your signature appear anywhere on Plaintiff's Exhibit 1?

A. Yes it does.

Q. Where is your signature on located on Plaintiffs Exhibit 1? (sic)

A. Two spots, under lessee for South Shore Imaging, and the second spot next to signature.

³ *Key Equip. Fin., Inc. v. South Shore Imaging, Inc.*, 39 AD3d 595, [2d Dep't. 2007].

Q. In the second spot, where your signature appears, is that above where it says in print, Ronald Pandolfini?

A. Looks like it, yes.

Q. Do you recognize the other signatures on the page?

A. Yes.

Q. Who are the other signatures?

A. Jason Pandolfini and Joseph Romagnolo.⁴

This court reviewed the document marked as plaintiff's exhibit 1 during Ronald Pandolfini's deposition as an exhibit to this motion. It depicts the master lease agreement with the signature of all three individual defendants without their corporate officer designations.

Later testimony of Ronald Pandolfini reveals the following:

Q. I'm going to show you what has been marked as Plaintiff's Exhibit 5 for identification. It is entitled, 'Equipment Schedule for Master Lease Agreement.' Do you recognize this document?

A. Yes.

Q. Do you recognize the signatures on the page?

A. I do.

Q. Can you tell me whose signatures appear on Plaintiff's Exhibit 5?

A. Myself, Jason Pandolfini, and Joe Romagnolo.

Q. When was Plaintiff's Exhibit 5 signed?

A. August 1, 2002.

Q. And that is the date that appears next to the signature line on Plaintiff's Exhibit 5; is that correct?

A. Yes.

Q. Looking at Plaintiff's Exhibit 5, looking at the guarantee

⁴ Ronald Pandolfini, Transcript.

section at the bottom of the page there, the three signatures that appear there, below those signature are some handwriting. Now, can you tell me below your name, what is handwritten there?

A. **President, or there about's.**

Q. I'm now going showing you both what has been marked Plaintiff's Exhibit 5 and Plaintiff's Exhibit 1. Can you please tell me, which document was signed first?

A. The way I remember it, this one was signed first, and then this one was signed second.

MR. MEROLESI: Referring to?

A. Plaintiff's Exhibit 1 was signed first and Exhibit 5 was second.

Q. What was the reasoning of having this second signing of the equipment schedule to the master lease agreement?

A. Jason had expressed to me about not being personally liable for it and I had gone to Joe and said, you know, read through this being our attorney and let us know what is that we have to do, and he came back and said put titles on the bottom.

Q. Just so I'm clear, the purpose of adding the titles at the bottom is so that there would not be personal liability; is that correct?

A. Right

Q. So, without the titles written at the bottom you would understand that you are being personally liable when you sign as a guarantor?

A. I make it a point not to do my own taxes and practice my own law. That being said, I brought it to the expert and that was the answer I got back.

Q. I'm asking you your understanding. When you signed the document, was it your understanding that by adding the titles that you would not be personally liable?

A. Right.

Q. And that without that, you would be personally liable under

- the guarantee, without the title underneath, president?
- A. Well, I guess so, yes.⁵

This court reviewed the document marked as Plaintiff's exhibit 5 during Ronald Pandolfini's deposition as an exhibit to this motion. It depicts the master lease agreement with **the signature of all three individual defendants with their corporate officer designations.**

In addition to Ronald Pandolfini's deposition, plaintiff took the deposition of Jason Pandolfini. The following exchange took place:

- Q. I now would like to show you a document marked Plaintiff's Exhibit 1 for identification. It is captioned at the top, 'Equipment Schedule to the Master Lease Agreement.' If you could take a look at that and tell me if you recognize that document?

A. I remember the document, yeah.

- Q. Do you recognize the signatures?

A. Yes.

- Q. Does your signature appear anywhere in the document?

A. Yes.

- Q. I'm going to show you what has been marked as Plaintiff's Exhibit 5 for identification. At the top is captioned, 'Master Equipment Schedule to the Master Lease Agreement.' Do you recognize this document?

A. Yes.

- Q. Do you recognize the signatures on the document?

A. Yes, I do.

- Q. Does your signature appear on Plaintiff's Exhibit 5?

A. Yes, it does.

⁵ *Id.*

- Q. Where does your signature appear on this document?
A. The bottom middle, Jason Pandolfini.
Q. It's right above your name where it's typed out?
A. Yes.

- Q. You testified before that you had spoken with Joseph Romagnolo and that in speaking with him, if you put your title beneath your signature, that you would not be personally liable; is that correct?
A. Yes.
Q. Now, in Plaintiff's Exhibit 1, your title or position does not appear beneath your name; is that correct?
A. Yes.
Q. So, in connection with the signing of this guarantee, is it your understanding that you would be liable, personally liable under the guarantee?
A. Yes.

- Q. Do you know which document was signed first or second, or you don't know?
A. I don't a hundred percent, I believe it was – I believe Exhibit 1 was signed first and Exhibit 5 was signed second.⁶

It is clear that the testimony of Ronald and Jason Pandolfini's at their depositions that after consulting with their counsel that they executed the equipment schedule to the Master Lease Agreement in their corporate capacities.

Since the Master Lease Agreement (Exhibit 1) is ineffective without reference to the specific item to be leased contained in the Master Equipment Schedule to the Master Lease (Exhibit 5). These documents must be read together as one document especially when they were signed together on the same date of August 1, 2002.

⁶ Jason Pandolfini, Transcript.

Accordingly, since the Schedule which included the subject equipment herein was signed last with all these defendants signing in their corporate capacity these are the controlling signatures especially in view of the testimony elicited at the deposition wherein the Pandolfinis consulted with their counsel who advised them that this was a corporate lease in the name of South Shore Imaging, Inc., and that their intent was only to be liable corporately and therefore they should sign in their corporate capacities as they did at the same sitting on the same day of August 11, 2002.

This court now turns its attention to that portion of the plaintiff's cross motion seeking sanctions against defendants' counsel for frivolous motion practice. It is within the court's discretion whether to impose sanctions on an attorney or their client for frivolous motion practice.⁷ It is the opinion of this court that the interpretation of the ruling handed down by the Appellate Division advanced by the defendants was meritorious. As such, the case before this court does not warrant sanctioning any defendant or their attorneys.

Conclusion

The depositions conducted by the plaintiff in this matter indicate that both Jason and Ronald Pandolfini understood that by signing the first lease agreement without affixing their corporate titles left them open to personal liability when South Shore defaulted. As such, no question of fact or law remains open with respect to these defendants.

Accordingly, it is hereby:

ORDERED, that defendants' Ronald Pandolfini and Jason Pandolfini's motion for summary judgment is granted in its entirety; it is further

⁷ 22 NYCRR 130-1.1

ORDERED, that defendants Joseph Romagnolo and South Shore's cross-motion for summary judgment is granted in its entirety; it is further

ORDERED, that plaintiff's cross-motion for summary judgment is granted to the extent of granting summary judgment in favor of defendants Jason Pandolfini and Ronald Pandolfini as follows:

Plaintiff is granted judgment only against South Shore Imaging, Inc. on the fifth, sixth and seventh causes of action in the amount of \$26,474.74, plus a \$209.82 late fee, together with interest as prayed for allowable by law, until the entry of judgment, as calculated by the Clerk of the Court, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of cost, and the Clerk is directed to enter judgment accordingly; it is further

ORDERED, that plaintiff's cross motion for summary judgment against defendant Joseph Romagnolo is denied; and it is further

ORDERED, that the portion of plaintiff's motion seeking sanctions against defendants and their attorneys is denied in its entirety.

ENTER,

DATED: August 18, 2008

Joseph J. Maltese
Justice of the Supreme Court