

A. Rashtian Corp. v United Parcel Serv., Inc.

2008 NY Slip Op 32329(U)

August 19, 2008

Supreme Court, New York County

Docket Number: 0110228/2006

Judge: Marilyn Shafer

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

PRESENT: Marilyn Shafer
Justice

PART 8

Index Number : 110228/2006

A.RASHTIAN CORP

INDEX NO. _____

vs

UNITED PARCEL SERVICE

MOTION DATE _____

Sequence Number : 002

MOTION SEQ. NO. _____

REARGUMENT/RECONSIDERATION

MOTION CAL. NO. _____

his motion to/for _____

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

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

1, 2, 3

Replying Affidavits Memorandum - Exhibits

4

5

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion to reargue is granted

And, upon reargument, defendant's motion for summary judgment is denied in accord with the annexed memorandum.

FILED

AUG 22 2008

COUNTY CLERK'S OFFICE
NEW YORK

MARILYN SHAFER
J.S.C.

Dated: 8/19/08

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

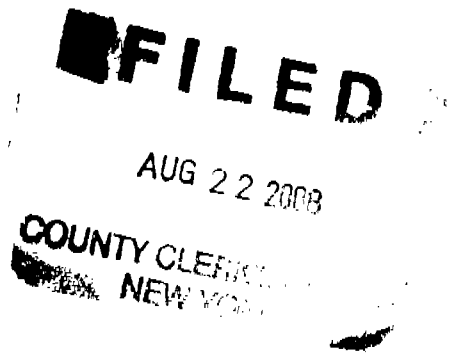
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER PART 8
Justice

A. RASHTIAN CORP., Plaintiff, INDEX NO. 110228/06
MOTION SEQ. NO. 002
-against-
UNITED PARCEL SERVICE, INC., Defendant.

The following papers, numbered 1 to 5, were read on this motion to dismiss the complaint:

Table with 2 columns: Description of papers and PAPERS NUMBERED. Includes entries for Notice of Motion, Memorandum of Law, Affirmation in Opposition, Reply Memorandum of Law, and Cross-Motion (Yes/No).



Upon the foregoing papers, the motion by defendant to reargue this Court's denial of its cross motion for summary judgment is granted and, upon reconsideration, defendant's motion for summary judgment is denied.

This Court denied the parties' cross-motions for summary judgment based upon the existence of disputed factual issues. Defendant moves this Court for reconsideration, arguing the disputed issues articulated by the Court relate only to the plaintiff's motion.

Background

It is undisputed that the plaintiff A. Rashtian Corp., a New York rug dealer, shipped a rug, via defendant, UPS, to California rug dealer, Joseph Amin. UPS accepts shipments with a declared value of \$50,000 or less. Rashtian informed the UPS driver who picked up the rug that it "was worth more than \$50,000 and perhaps worth as much as \$75,000." The driver advised him to "declare a value of only \$50,000 in order to comply with the United Parcel Service requirement that a declared value not exceed \$50,000."

The driver calculated the freight charge, which was paid, and a UPS shipping document, reflecting a declared value of \$50,000, was issued.

The fate of the shipment is disputed. Rashtian moved for summary judgment based upon an affidavit from Mrs. Amin stating the shipment was never received. Rashtian did not deny that he declared a value of \$50,000 but argued that UPS was estopped from limiting his recovery to the declared value because he was "misled" by the UPS driver into declaring a value lower than the rug's worth. In support of his claim that the rug was worth more than \$50,000, he submitted a copy of his bill of sale to Amin showing a sale price of \$75,000.

In opposition to Rashtian's motion, UPS submitted its tracking records and employee affidavits documenting that the rug was delivered. UPS cross-moved for summary judgment arguing that a shipment valued in excess of \$50,000 is a "prohibited shipment" for which it has no liability as a matter of law.

This Court denied both cross-motions for summary judgment holding that "questions of fact exist as to where delivery of the missing rug was made which cannot be resolved on affidavits." In its decision, this Court implicitly rejected UPS denial of liability as a matter of

law. UPS moves to reargue, deeming this Court's implicit rejection as misapprehension.

Discussion

The law is clear that, within constitutional limits, federal preemption of state law is found where Congress has explicitly expressed its intent to preempt, or where the nature and object of the federal laws and regulatory scheme show Congress' intent to occupy the entire field. (*Ingram Micro, Inc v Airoute Cargo Express, Inc*, 154 F Supp 2d 834 [SDNY 2001]) Such is the case regarding interstate shipping. Congress has created a comprehensive scheme covering the interstate shipment of freight, aimed at preventing preferential treatment among shippers and establishing national equality of rates and services. This has occupied the field to the exclusion of state law. (*United States Gold Corp v Federal Express Corp*, 719 F Supp 1217 [SDNY 1989]) Because UPS is a common carrier, and Rashtian alleges a loss of goods during interstate air transportation, the loss is governed exclusively by federal common law. (*Ingram supra*)

A contract between a shipper and a carrier consists of a shipping document and the applicable tariff. UPS's shipping document forms the basic contract for transportation and binds the shipper and the carrier. (*Southern Pacific Transp Co v Commercial Metals Co*, 456 US 336 [1982]) A carrier need not demonstrate that the shipper had actual knowledge of the liability limitation; acceptance and use of the service suffices to establish a valid agreement limiting the carrier's liability. (*First Pa Bank, NA v Eastern Airlines, Inc*, 731 F2d 113 [3d Cir 1984]) A carrier is permitted to limit its liability pursuant to its tariff. (49 USC § 14706(a & c):

[U]nder the federal common law governing common carriers, carriers may partially limit their liability for injury, loss or destruction of baggage on a 'released valuation' basis. Under this doctrine, in exchange for a low carriage rate, the passenger-shipper is deemed to have released the carrier from liability beyond a stated amount. (*Deiro v American Airlines, Inc*, 816 F2d 1360 [9th Cir

1987))

The UPS General Tariff, in relevant part, limits the liability that UPS has with respect to a lost or damaged package:

Where a value has been declared and the applicable charges paid, UPS's maximum liability shall not exceed the lesser of: (1) the declared value on the UPS source document or shipping system used;(2) the lesser of the purchase price paid by the consignee ..., the actual cost, or the replacement cost of the property; (3) the cost of repairing the damaged property, (4) \$50,000 per package

By signing the shipping document, Rashtian acknowledged that the shipment was subject to the terms and conditions of the UPS General Tariff. Since the record is silent as to Rashtian's purchase price, actual cost or replacement cost, the recovery to which he would be entitled, if he demonstrated that the shipment was lost, is a question of fact requiring evidence beyond a bill of sale he himself prepared and signed.

This Court finds, however, that under any circumstances, Rashtian's recovery is limited to the declared value of \$50,000. The parties have failed to provide a single instance in which a court invalidated a lawfully imposed limitation of liability where the shipper appeared to be reasonably sophisticated and a declared value was stated. (*See, eg, Vogelsang v Delta Air Lines, Inc*, 302 F.2d 709 [C.A.2, 1962]; *United State Gold Corporation v Federal Express Corporation*, 719 F. Supp. 1217 [S.D.N.Y. 1989]; *Jones v Yellow Freight System, Inc*, 656 F. Supp. 550 [M.D. Ga. 1987])

This Court further finds that UPS is not estopped from asserting this limitation. Nothing in the record suggests that Rashtian was misled into believing that UPS would cover the shipment beyond its declared value. (*Perini-North River Associates v Chesapeake & O Ry*, 562 F.2d 269, 272-73 [3d Cir. 1977])

Finally, this Court finds that UPS cannot deny its liability for the shipment as a matter of law. UPS seeks to rely upon the following tariff provision:

Shippers are prohibited from shipping articles of unusual value via UPS. Articles of unusual value shall be deemed to include, but are not limited to:

- (1) Coins ..., currency, postage stamps, negotiable instruments (except checks), money orders, unset precious stones, and industrial diamonds.
 - (2) Any article which contains more than fifty percent by weight of gold, silver, or platinum or any combination thereof in raw form, bullion, balls bars grains, strip, sheet, wire, chain, ingots and the scrap of these metals.
 - (3) Any packages having a value of more than \$50,000.
- UPS will not be liable for any loss of, or damage to, articles of unusual value.
(Item 460 of the UPS General Tariff)

However, the actual value of the shipment is a question of fact and, since a rug is not an otherwise prohibited article, the shipment cannot be deemed a "prohibited shipment."

(Commodities Recovery Corporation v Emery Worldwide, 756 F Supp 210 [DNJ 1991]; Soomekh v UPS, Inc, 801 NYS2d 242 [Nassau Cty 2005])

We have considered the other arguments raised by the parties and find them without merit.

Accordingly, it is hereby

ORDERED that the motion by the defendant to reargue this Court's denial of its motion for summary judgment is granted and, upon reargument, defendant's motion for summary judgment is denied.

This reflects the decision and order of this Court.

Dated: 8/19/08

FILED
 AUG 22 2008
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