

Yellow Book of N.Y., Inc. v Albano

2009 NY Slip Op 32319(U)

October 2, 2009

Supreme Court, Nassau County

Docket Number: 3486/05

Judge: Michele M. Woodard

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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YELLOW BOOK OF NEW YORK, INC.,
Plaintiff,

MICHELE M. WOODARD,
J.S.C.
TRIAL/IAS Part 14
Index No.: 3486/05

-against-

PETER ALBANO, KATE SMITH AND AMERICAN
EXECUTIVE TRANSPORTATION, INC.

DECISION AFTER TRIAL

Defendants.

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Plaintiff Yellow Book of New York, Inc., (“Yellow Book”) sells advertising space to area businesses. In this breach of contract action against Peter Albano and American Executive Transportation (“AET”), Steven Munch, a Yellow Book district sales manager promoted from the position of a commissioned account representative for the Plaintiff, testified that it was his responsibility on the dates in question to seek out potential advertisers, meet with them, draw up contracts, take deposits and return the signed contracts to his company leaving a copy with the customer. He testified that he first solicited business from American Executive Transportation through a business meeting at a Brooklyn diner in the Fall of 2002 with Kate Smith, who represented herself as the operations manager¹. He identified Plaintiff’s Exhibit 1, as the completed contract he prepared at a Brooklyn diner with the aid of Kate Smith at the first meeting and Exhibits 2, 3, 4 and 5 as the contracts prepared later with Peter Albano, at subsequent meetings in February, April, and June and July 2003. While there was some confusion about the location of the meetings with Mr. Albano, Mr. Munch testified that at each of those meetings he arranged, by telephone, with Mr. Albano to meet for the specific purpose of soliciting advertising space and that each time they met the contract was completed at the meeting and he observed Mr. Albano sign the contract. Mr. Albano denies ever seeing or signing the contracts.

¹A default judgment has already been granted against Kate Smith.

Significant to the facts in dispute is the Suffolk County, New York address indicated on the contracts as the business address for American Executive Transportation. Mr. Munch testified that “3845 Veterans Memorial Highway” in Ronkonkoma was the address given to him through a “call-in” lead, that it was placed on the contract given to Kate Smith who confirmed the address at the first meeting and that he continued to put that address on the subsequent advertisement contracts provided to Mr. Albano who signed the contracts in his presence without challenging the stated address. His recollection, stated in response to a question from Defendant’s attorney, was that one of the meetings with Mr. Albano took place at Mr. Albano’s Ronkonkoma office, that the signing of the contract took place in a garage repair shop behind an office containing limousines and that Mr. Albano had explained that it was the location where some of his limousines came from. On cross-examination, Mr. Munch acknowledged that the address indicated on the contract was in fact a Holiday Inn, that he never met Mr. Albano at a Holiday Inn, but did not waiver on his testimony that he met with Mr. Albano at the Suffolk County garage notwithstanding the address difference.

Mr. Munch testified that he believed Plaintiff’s Ex. 4, the contract dated June 9, 2003 was signed in his presence at a quick meeting with Mr. Albano and may have been signed as they sat in a truck or a car, however he did not recall the location of that particular meeting.

Mr. Albano testified that he first met Kate Smith in 1995 in Ronkonkoma, New York and thereafter entered into a business arrangement with her involving leasing his limousines in Long Island. He said prior to meeting her, he owned Amex Limousine Service Corp., (“Amex”) located in Brooklyn, New York, since 1980 which provided “exotic limousines,” i.e., stretch SUV’s, stretch Cadillacs, Jaguars, Mercedes and cars of that nature in New York City. He said he caused the formation of American Executive Transportation (“AET”) for insurance purposes and to increase his business to include Long Island customers and that AET was located at 345 Carlough Road, in Bohemia, where the company, along with other related businesses, was given a desk by a large limousine manufacturer, United States Coach (“Coach”), from which AET could operate legally in Long Island. He also referenced his desire to comply with DOT rules and liability insurance requirements for the various type of limousines his AMEX company owned. He testified that he met Kate Smith, a wedding dress designer and limousine owner

through the consortium developed by the limousine manufacturer and that he conducted two dozen jobs for her. Sometimes she used his limousines and other times he used hers. Mr. Albano's own description of the Coach facility coincided with Mr. Munch's description of the office and garage where Mr. Munch testified that one of the contracts was signed by Mr. Albano in his presence. Notably, Mr. Albano's testimony as to how the AET corporation was formed and his relationship with that corporation and with Ms. Smith was convoluted and contradictory. For example, he testified that he did form it by contacting an attorney and also that he did not form the corporation, then changed his testimony stating that AET was never incorporated and that he did not understand his relationship with the corporation and also testified that he was an employee. Significantly he testified on cross examination "I had an ownership interest in it, a percentage" and that AET "was a company I was running, a company I took over" (Trial transcript p. 44, 51 and 56).

Mr. Albano admitted meeting Mr. Munch, through Kate Smith when he "inadvertently" met him at a Brooklyn diner on two occasions but denied ever meeting with him in order to do business with Yellow Book. He testified that he did not do business at the Holiday Inn and that AET did not have a location at the Holiday Inn address and that he never met with Mr. Munch at that Holiday Inn and the "800" and Tax I.D. number written on the contract was not the number for AET or AMEX. However true this might be, the contradictory testimony of Mr. Albano calls in to question the veracity of his denial regarding his signing of the contracts.

The preponderance of the credible testimony establishes that the Plaintiff's employee Mr. Munch met with the Defendant Peter Albano, a principal of the corporate Defendant AET, for the purpose of obtaining advertising business for the Defendant's limousine company and that after being given an opportunity to review the terms of the contracts, Peter Albano signed them in front of the Plaintiff's employee, Steven Munch.

The Court is further persuaded by the testimony of the Plaintiff's expert and the failure of the Defendant to present an expert even though he specifically requested an extended adjournment of the trial to produce one.

Dennis Ryan, an experienced Forensic Document Examiner, trained in handwriting analysis reviewed the subject contracts submitted as Plaintiff's Ex. 2, 3, 4 and 5. Using

comparison signatures known to be that of Peter Albano, he opined that Plaintiff's Ex. 2, 3 and 5 were signed by the Defendant Peter Albano. As to Plaintiff's Ex. 4, he testified that he could not arrive at a verification. Upon consideration of the Defendant's conflicting testimony and the handwriting expert's testimony, as well as the credible testimony of Mr. Munch, the Plaintiff established that three of the four contracts were signed by the Defendant. Therefore, the Court finds that the Plaintiff has established liability as to the contracts dated February 10, 2003, April 1, 2003 and July 28, 2003, but failed to do so as to the one dated June 9, 2003.

In the Defendants' answer, he also raised the issue of whether he was personally liable for the corporate obligation to pay for the advertising under the contracts. Although the Defendant gave no testimony on this issue, contending solely that he never met with Mr. Munch regarding doing business with Yellow Book and did not sign the subject contracts, the Court determines that the legal argument must be addressed.

The Defendant argues that despite the printed words directly beneath the signature line and the reference to additional language found on the back of the document, the lack of a separate signature line denoting personal liability is sufficient to preclude Mr. Albano's personal liability for payment of the contractual liability of his company.

In its memorandum of law, the Defendant argues that "the subject contract" has one signature binding the corporation and language on the reverse side of the contract binding the corporation's "agent" individually. (Def. Memo page 4). Defendant contends that "[a]s a matter of law, Yellow Book's contract alone will not hold an "agent" responsible for a corporate debt," citing *Yellow Book of NY, LP v Depante*, 309 AD 2d 859, 860 (2d Dept 2000). The Defendant also takes the position that the form itself has resulted in various courts declining to hold the "agent" personally liable for a disclosed principal. Defendant cites, for example, to a 1993 Nassau County District Court case, *Yellow Book Co. Inc. v Green*, 1993 WL603209, in which the Court found, as to the form before it that, "printing below signature line and reference to clause 15 are not sufficient to impose individual liability." Defendant also refers the Court to the 1994 Nassau County Supreme Court case (*Yellow Book Co., Inc. v Williams*, NYLJ, Sept. 26, 1994) in which the court found as to the form before it, "to bind an individual and a corporation, there must be two signatures, one for the corporate obligation and one for the individual obligation. If

a contract contains both written and printed provisions, and it appears that the printed matter is in obscure type or placed where it is not likely to be seen, or that the printed matter was evidently not intended to be incorporated into the contract, the printed matter is to be accorded little influence in changing the clear and explicit language of the contract.”

The Defendant relies on Summary Judgment cases that are not dispositive of the issue in this case. All of the appellate cases involved the principal of agency. Here, this decision follows a trial and this Court finds that Mr. Albano is not the “agent” but rather a shareholder and principal of the corporate Defendant. More significantly, the Appellate Term for the Second Department has held that the language in Yellow Book’s contract binds the contractor in both his or her personal and corporate capacities. *Yellow Book Co., Inc. v Mega*, 190 Misc. 2d 108 App. Term 10th Jud. Dist. 2001 (citing *Yellow Book Co., Inc. v Baum*, (N.Y.L.J., January 2, 2001, [App. Term 9 & 10 Jud. Dists])).

In the Mega case, the Court referred to language that is similar to the language contained in the subject contracts, stating:

In this breach of contract action, defendant Mega testified that she read the contract and noticed the printed words directly beneath her signature which read: “Individually and For Company (Read Clause 15 On Reverse Side)” On the reverse side of the contract, paragraph 15 states:

“15.A.) THE PERSON SIGNING THIS AGREEMENT WARRANTS THAT HE IS AUTHORIZED TO SIGN IT.

“B.) THE SIGNER OF THE CONTRACT, DOES, BY HIS EXECUTION OF THIS AGREEMENT, PERSONALLY UNDERTAKE AND ASSUME THE FULL PERFORMANCE HEREOF INCLUDING PAYMENTS OF AMOUNTS DUE HEREUNDER.”

No evidence was provided at trial to establish that the version of the contracts criticized in earlier Court decisions, such as *Yellow Book Co., Inc. v Williams*, *supra*, relied upon by the Defendant, is the same version as those challenged in this case. Nonetheless, the Court does not find the printed language in the subject contracts obscure or not intended to be incorporated into the contract as held in the *Williams* case. In the instant case, the Court now finds that Mr. Albano signed the challenged contracts which he is presumed by law to have read and

understood the terms before signing them (*Pimpinello v Swift & Co.*, 253 NY159 [1930]). The printed words directly beneath his signature read: “Authorized Signature Individually and for the Company (Read clause 14F on reverse side)”. On the reverse side of the contract, paragraph 14F states:

“14F. THE SIGNER OF THIS AGREEMENT DOES, BY HIS EXECUTION PERSONALLY AND INDIVIDUALLY UNDERTAKE AND ASSUME THE FULL PERFORMANCE HEREOF INCLUDING PAYMENTS OF AMOUNTS DUE HEREUNDER.”

(Print enlarged for emphasis only).

Based upon the placement and unequivocal nature of the printed matter on the subject contracts and the apparent sophistication of Mr. Albano and particularly the aforementioned Appellate Term cases, which the Court finds more on point than those relied upon by the Defendant, the Court holds that Mr. Albano is personally liable for the contractual payments billed by the Plaintiff, with interest at 18% from April 30, 2004, with the exception of any bills produced as a result of the June 9, 2003 contract.

Attorney Fees


Based upon the testimony of Plaintiff’s attorney, and despite the contract provisions which provide for a fee equal to 1/3 of the amount due plus interest, in its discretion, the Court awards Concetta G. Spiro, Esq. attorney’s fees in the amount of \$8,500.00, which the Court finds fair and reasonable.

Settle Judgment on notice.

This constitutes the Decision and Order of the Court.

DATED: October 2, 2009
Mineola, N.Y. 11501

ENTER:



HON. MICHELE M. WOODARD
J.S.C.