

**Maxwell Intl. Trading Group Ltd. v Cargo Alliance
Logistics, Inc.**

2011 NY Slip Op 33810(U)

June 15, 2011

Sup Ct, New York County

Docket Number: 600363/08

Judge: Jeffrey K. Oing

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: _____

PART 48

Justice

Index Number : 600363/2008
MAXWELL INTERNATIONAL
 vs.
CARGO ALLIANCE
 SEQUENCE NUMBER : 002
 REARGUMENT/RECONSIDERATION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

1 this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

~~This~~ motion is decided in accordance with the annexed decision and order of the Court.

FILED

JUN 16 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/15/11

JEFFREY K. OING
J.S.C./S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 48

-----x

MAXWELL INTERNATIONAL TRADING
GROUP LTD.,

Plaintiff,

-against-

CARGO ALLIANCE LOGISTICS, INC.,
CHANGE GROUP LOGISTICS, and
JAY WU,

Defendants.

-----x

JEFFREY K. OING, J.:

Defendants, Cargo Alliance Logistics, Inc., Change Group
Logistics ("CGL"), and Jay Wu, move, pursuant to CPLR 2221, for
an order granting them leave to reargue this Court's prior
decision and order, entered February 15, 2011, and, upon
reargument, granting defendants summary judgment dismissing the
complaint.

Defendants argue that this Court overlooked or
misapprehended matters of fact and law regarding defendants'
contractual obligations to plaintiff and defendants' possession
of the goods. In that regard, defendants argue that this Court
erred by stating in the decision and order that "Plaintiff
contracted with CGL, a freight forwarder, to assist in the
clearance of plaintiff's garment order, consisting of 1008
cartons, through U.S. Customs, and the shipment and storage of
the garment order to a designated warehouse pending delivery of

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DECISION AND ORDER

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the garments to plaintiff's customers" (Moving Papers, Ex. 1). Defendants claim that the Court's statement characterizes defendants' contractual obligations as including shipment and storage and overlooks the fact that defendant CGL was merely contracted to assist in the shipment and storage of the sweaters to a designated warehouse pending delivery of the sweaters to plaintiff's customers (Wu Affirm., 3/25/11, ¶ 10 [emphasis added]). Defendants argue that the language "to assist" should be applied to "shipment and storage" in addition to "clearance of the sweaters through U.S. Customs" (Id., ¶ 11). Defendants also point out that the sweaters were in the care of Victoria Express when they were lost. Thus, defendants argue that their:

demonstrations that 1) they were merely contractually obligated to assist in the shipment and storage of the goods and were not responsible for actual shipment and storage; and 2) the goods were never in defendants' possession in the course of its performance of the contract it entered with the plaintiff are sufficient to remove all factual issues as to whether it breached its contract with plaintiff

(Id., ¶ 19 [emphasis in the original]).

Defendants argument is unpersuasive. To begin, an attorney affirmation not based on personal knowledge of the details and negotiations of the underlying transaction is insufficient support for the arguments raised in the instant motion. In any event, according to this record, defendants' liability arises from its agreement to arrange storage and transport of the

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garments. Defendants accomplished this through its customs broker, United Way (Moving Papers, Ex. 4, Wu EBT, p. 39). Defendants gave instructions to United Way to arrange shipment of the garments to Famous Target, the warehouse designated by plaintiff (Id., pp. 57-58). Defendants' broker used Victoria Express to store and ship the garments to Famous Target (Id., p. 48). United Way billed defendants for their services, as well as the services of Victoria Express (Id., pp. 48-49, 53). And, ultimately, defendants billed plaintiff for the services provided by United Way (Id., p. 59-61). As such, regardless of whether the parties agreed that defendants would merely "assist" in the shipment and storage of the garments, defendants indeed undertook the obligation of arranging, and did arrange, the shipment of the garments to Famous Target via Victoria Express. The arrangements defendants made, or the assistance it rendered, however, were allegedly deficient because the delivery purportedly never occurred.

Defendants next argue that this Court's conclusion that Mr. Wu's EBT testimony "that he spoke with someone at Famous Target warehouse who claimed to be the owner of the warehouse, and that the individual denied that he received the 1008 carton shipment ... creates an issue of fact as to whether the 1008 carton shipment was actually delivered to Famous Target" is a misapprehension of the law and facts (Moving Papers, Ex. 1).

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Defendants claim that "a freight forwarder is liable to its shipper for loss or damage to the freight exactly as if it were a carrier and its liability ends upon full delivery and acceptance of the goods which it transported" (Wu Affirm., 3/25/11, ¶ 22). Paraphrasing defendant Wu's statements set forth in his August 2, 2010 affidavit, counsel contends that the January 18, 2008 delivery order is conclusive proof that defendants, as freight forwarders, secured full delivery and acceptance of the sweaters in compliance with the terms of the contract (Id., ¶ 26).

This argument is equally unavailing. Other than this self serving assertion, defendants fail to refer to legal authority for its argument that the delivery order is conclusive proof that defendants secured full delivery and acceptance of the sweaters. While the delivery order may constitute prima facie evidence that the garments were delivered and accepted, here, plaintiff clearly raises factual issues by not only claiming it never received the shipment, but also pointing to defendant Wu's EBT testimony that he spoke to someone at Famous Target who claimed to be the owner of the warehouse and who denied receiving the 1008 carton shipment (Moving Papers, Ex. 4, Wu EBT, p. 65).

Finally, defendants argue that this Court overlooked or misapprehended matters of fact and law regarding defendant Jay Wu's individual liability for the breach of contract claim. This

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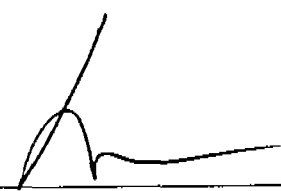
argument is rejected and not considered because it was not set forth in their original moving papers (Moving Papers, Ex. 2).

Accordingly, it is

ORDERED that defendants' motion to reargue is denied.

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

Dated: 6/15/11



HON. JEFFREY K. OING, J.S.C.

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