

**Hicham Chafic Soueidan, CA Only Corp. v FBB
College Point, LLC**

2013 NY Slip Op 30707(U)

April 5, 2013

Sup Ct, Queens County

Docket Number: 625/11

Judge: Bernice Daun Siegal

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Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19
Justice

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Hicham Chafic Soueidan, CA Only Corp., and
Abbas Kourani,

Plaintiff,

Index No.: 625/11
Motion Date: 1/30/13
Motion Cal. No.: 130
Motion Seq. No.: 3

-against-

FBB College Point, LLC, FBB College Point Corp.,
FBB, LLC d/b/a City Closet Storage,

Defendants.

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The following papers numbered 1 to 14 read on this motion for an order pursuant to CPLR §3212 granting summary judgment in favor of defendants FBB College Point, LLC, FBB College Point Corp.; and dismissing plaintiffs Hicham Chafic Soueidan, CA Only Corp., and Abbas Kourani’s verified complaint against defendants FBB College Point, LLC, FBB College Point Corporation in its entirety, with prejudice.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits.....	1 - 4
Affirmation in Opposition.....	5 - 9
Affidavit in Opposition.....	10 - 11
Reply Affirmation.....	12 - 14

Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows:

Defendants, FBB College Point, LLC and FBB College Point Corp. (collectively as “defendants”) move for an order pursuant to CPLR §3212 dismissing the verified complaint of plaintiffs Hicham Chafic Soueidan (“Soueidan”), CA Only Corp (“CA”) and Abbas Kourani’s

(“Kourani”) (collectively as “plaintiffs”) verified complaint.

Facts

CA is wholly owned by Kourani who is in the business of importing clothing and reselling the clothing in the United States. According to the complaint, Soueidan was “acting as an agent for CA...”

Plaintiffs contend that on November 16, 2010, Soueidan, on behalf of CA entered into a “Self Storage Occupancy Agreement” (“rental agreement”) with defendants for three storage rooms. Each storage room had its own rental agreement; however, for the purposes of this motion all of the relevant language regarding liability is identical.

Specifically, each rental agreement provides that “no bailment is created” and that “the owner is not engaged in the business of storing goods for hire.” In addition, all three agreements specifically state that the defendants are “not in the warehouse business but is simply providing a storage unit which the occupant can store personal property owned by the occupant.” Further, each agreement provides that the defendants do not “take care custody and control, possession or dominion of the contents of the storage unit and does not agree to provide protection for the self service storage unit or the contents thereof.”

Furthermore, while the plaintiffs allege damages in the amount of \$100,000¹, the rental agreements provide that the occupant represents that the “total value of all property stored or to be stored in the future in the storage unit is less than \$2,000 unless occupant advises Owner in advance and in writing of a greater value and the Owner acknowledges same in writing.” In addition, the

¹Plaintiffs’ complaint asserts that the goods had a value of approximately \$90,000 based on the price plaintiffs paid for them but the goods were to ship for the Christmas and Winter seasons for an estimated \$100,000.

rental agreements limited the defendants' liability to \$20.00 per square foot per room.

Plaintiffs contend that on December 11, 2010, the storage facility was robbed and that all of the goods owned by plaintiffs at the storage facility were taken. Plaintiffs contend that the theft was an "inside job" by the security guard on hand.

Defendants contend that the plaintiffs were responsible for locking their own unit and for purchasing their own insurance.

Plaintiffs' complaint asserts a cause of action for conversion and a separate cause of action for negligence.

Analysis

Defendants' amended notice of motion is granted and the complaint is dismissed as more fully set forth below.

Discussion

It is well established that summary judgment should be granted when there is no doubt as to the absence of triable issues. (*See Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 [1978].) As such, the function of the court on the instant motion is issue finding and not issue determination. (*See D.B.D. Nominee, Inc., v. 814 10th Ave. Corp.*, 109 A.D.2d 668, 669 [2nd Dept. 1985].) The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. (*See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980].) If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his position. (*See Zuckerman v. City of New York, supra.*)

Plaintiffs' first cause of action is for conversion. "To establish a cause of action to recover

damages for conversion, a plaintiff must show legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of the plaintiff's rights.” (*National Center for Crisis Management, Inc. v. Lerner*, 91 A.D.3d 920, 920 [2nd Dept 2012] quoting *Cusack v. American Defense Systems, Inc.*, 86 A.D.3d 586, 587 [2nd Dept 2011].) Furthermore, conversion is defined as “an intentional act of domination or control over a chattel which so seriously interferes with the right of another to control it...” (*Goldstein v. Guida*, 74 A.D.3d 1143, 1144 [2nd Dept 2010] citing *Thyroff v. Nationwide Mut. Ins. Co.*, 8 N.Y.3d 283 [2007].) The rental agreements specifically state that the defendants do not “take care custody and control, possession or dominion of the contents of the storage unit...”.

In determining whether there is a valid cause of action for negligence in the within action the court must first determine whether the relationship between the parties is one of a lessor-lessee or bailor-bailee. The need for this determination is that the a bailor-bailee relationship gives rise to a presumption of negligence, however, there is no such presumption when goods are stored by the owner at a storage facility leased by the owner. (*Hutton v. Public Storage Management, Inc.*, 177 Misc.2d 540 [App. Term 2nd Dept 1998] citing 9 N.Y.Jur.2d, Bailments and Chattel Leases, § 13.) “Whether a person simply rents a place to put his property or whether he has turned its possession over to the care and custody of another depends on the ‘place, conditions, and the nature of the transaction.’” (*Herrington v. Verrilli*, 151 F.Supp.2d 449, 457 [SDNY 2001] citing *Osborn v. Cline*, 263 N.Y. 434, 483 [1934].) The “Tenant Responsibility Addendum” for each unit provided that the plaintiffs understood that the storage facility “[i]s not responsible for any loss or damage to my property... and is not a bailee or warehouseman.” In addition, Kourani testified at his deposition that

he provided his own locks.

Furthermore, Lien Law §182, provides, in pertinent part, that “[t]he owner of a self-service storage facility shall not be deemed to be a warehouseman...”

In the within action, the place, conditions and nature of the transaction all indicate that the relationship between the parties was merely one of a lessor-lessee. Accordingly, defendants established its prima facie entitlement to summary judgment. Once the moving party makes a prima facie showing of entitlement to summary judgment in their favor, it is incumbent upon the opposing party to come forth with evidentiary proof in admissible form sufficient to demonstrate the existence of triable issues of fact. (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980].)

In opposition, plaintiffs failed to raise a triable issue of fact. Plaintiffs contend that the rental agreements are unenforceable and they are contracts of adhesion. “A contract of adhesion contains terms that are unfair and nonnegotiable and arises from a disparity of bargaining power or oppressive tactics.” (*Love'M Sheltering, Inc. v. County of Suffolk*, 33 A.D.3d 923, 924 [2nd Dept 2006]; *Morris v. Snappy Car Rental, Inc.*, 84 N.Y.2d 21[1994].) Further, a finding of adhesion requires the use of high pressure tactics or deceptive language in the contract. (*Precision Mechanical, Inc. v. Dormitory Authority of the State of New York*, 5 A.D.3d 653, 654 [2nd Dept 2004].) In addition, it must be shown that the contract inflicts substantive unfairness on the weaker party” (*Id.*) Plaintiffs fail to establish any of these elements. There is no proof that there was “high pressure tactics” at the time plaintiffs entered into the rental agreements and there is nothing deceptive about the language. In addition, the plaintiffs were businessmen by virtue of their status and cannot establish that there was a “disparity of bargaining power.”

Plaintiffs also argue that defendants should be considered warehousemen and therefore liable

for negligence and conversion. However, the agreement clearly states that defendant is not a warehouse nor a bailee and the conditions surrounding the parties arrangement were that of a lessor-lessee relationship.(Lien Law §182; *Ross v Tuck-It-Away, Inc.*, 180 A.D.2d 428, 429 [1st Dept 1992].)

Plaintiffs argue that there are issues of fact because the robbery *may* have been an “inside job.” However, plaintiffs fail to submit proof, of any kind, buttressing this assertion. It is well settled, that the “[m]ere surmise, suspicion, speculation, and conjecture are insufficient to defeat a motion for summary judgment.” (*Fredette v. Town of Southampton*, 95 A.D.3d 939, 940 [2nd Dept 2012]; *Fotiatis v. Cambridge Hall Tenants Corp.*, 70 A.D.3d 631 [2nd Dept 2010].)

Plaintiffs also contend that the rental agreements incorrectly identify the owners of the units as “FBB LLC” instead of FBB College Point LLC, d/b/a City Closet Storage. However, plaintiffs do not dispute entering into a contract with the defendants and are merely trying to use a minor typographical error to relieve themselves from the strict terms of the contract they knowingly entered into.

Accordingly, plaintiffs have failed to raise a triable issue of fact.

Conclusion

For the reasons set forth above, defendants’ amended notice of motion for summary judgment is granted and the complaint is dismissed.

Dated: April 5 , 2012

Bernice D. Siegal, J. S. C.