

Singapore Airlines, Ltd. v General Elec. Co.
2019 NY Slip Op 33838(U)
December 30, 2019
Supreme Court, New York County
Docket Number: 652683/18
Judge: Shlomo S. Hagler
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17**

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**SINGAPORE AIRLINES, LTD. and
SINGAPORE AVIATION AND GENERAL
INSURANCE COMPANY (PTE) LTD.,**

Plaintiffs,

Index No.: 652683/18

-against-

DECISION AND ORDER

GENERAL ELECTRIC COMPANY,

Defendant.

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HON. SHLOMO S. HAGLER, J.S.C.:

In this products liability/property damage action, defendant General Electric Company (“GE”) moves, pursuant to CPLR 3211 (a) (1) and (a) (7), to dismiss the complaint.

Background

Plaintiff Singapore Airlines, Ltd. (“SIA”) alleges that an airplane engine it bought from GE caught fire and caused damage to the adjacent wing. Although the engine was replaced by GE and the repairs to the wing were paid for by insurance, SIA and its insurer Singapore Aviation and General Insurance Company (PTE) Ltd. (“SAGI”) seek to hold GE liable for the damage to the wing. SIA and SAGI seek to recoup what SAGI paid to repair the wing.

On December 10, 2004, GE and SIA executed a contract, the General Terms Agreement (“GTA”) documenting “(i) a standing offer by GE to sell, and a continuing opportunity for [SIA] to purchase from GE, spare Engines and support equipment for such installed and spare Engines, and (ii) Product Services to be supplied by GE in support of such installed and spare Engines” (Atkins affirmation, exhibit 2, Complaint ¶ 4). The parties negotiated and included extensive

language governing the rights and obligations of GE and SIA in the event of an engine malfunction that could potentially damage the engine or an SIA aircraft (Atkins affirmation, exhibit 2 at 11, Article XI).

Specifically, the parties agreed to (1) limit any potential damages to the purchase price of the engine and (2) expressly prohibit liability for any incidental or consequential damages arising from damage to the rest of the aircraft or any other part thereof:

“[T]he liability of [GE] to Airline arising out of, connected with, or resulting from the manufacture, sale, possession, use or handling of any Product (including Engines installed on Airline’s aircraft as original equipment) or the furnishing of services, whether in contract, tort (including negligence) or otherwise, shall be as set forth in the Product Support Plan included in Exhibit B hereof, and shall not in any event exceed the purchase price of the Product, service or other thing giving rise to Airline’s claim. The foregoing shall constitute the sole remedy of the Airline and the sole liability of Seller. In no event shall Seller be liable for special, incidental or consequential damages, including, but not limited to, damage to, or loss of use, revenue or profit with respect to **any aircraft, engine, or part thereof (Bold added)**”

(Atkins affirmation, exhibit 2 at 11, Article XI).

The GTA also excludes implied warranties of merchantability arising from any course of dealing, course of performance, or usage of trade:

“THE WARRANTIES AND GUARANTEES SET FORTH IN SECTION II OF EXHIBIT B (THE “PRODUCT SUPPORT PLAN”) TO THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES WHETHER WRITTEN, STATUTORY, ORAL, OR IMPLIED (INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE)

(Atkins affirmation, exhibit 2 at 11, Article XI (GTA)).

The GE90 Product Support Plan, an exhibit to the GTA; reiterates that “in no case shall GE’s liability to SIA exceed the purchase price of the Product giving rise to SIA’s claim” and

that “[i]n no event shall GE be liable for incidental or consequential damages” (Atkins affirmation, exhibit 3 at 30).

Pursuant to the GTA, the parties allocated the risk of damage to the engine from an engine malfunction to GE, through numerous contractual warranties, and the risk of damage to other parts of the aircraft to SIA, through the limitation on liability. SIA obtained insurance that provided coverage for damage to other parts of the aircraft arising from an engine malfunction. To date, in excess of \$16,900,000 has been paid to repair the aircraft damage.

On December 3, 2014, GE issued and delivered to SIA a service bulletin which notes that GE identified “cases of increment of oil system quantity” related to a component part in the GE 90-115B engine, and that, in one instance, fire was observed to have occurred “due to fuel leakage into the engine oil system” ((Atkins affirmation, exhibit 4, Service Bulletin at p. 3, 1E[2-3])).

On June 27, 2016, SIA operated the Aircraft on the regularly scheduled flight from Changi International Airport in Singapore to Milan, Italy. The Aircraft was equipped with two GE90-115B model aircraft engines. Thirty minutes into the flight, the flight crew detected anomalies in the Engine’s oil system and the pilot in command returned the Aircraft to Changi International Airport. During landing, the Engine caught fire. The passengers and crew were evacuated without injuries, but the fire caused damage to the Engine and to the right wing of the Aircraft. The costs to repair the Aircraft totaled in excess of \$16,900,000. The Aircraft was insured under the policy issued by SAGI. To date, pursuant to the policies of insurance and reinsurance, in excess of \$16,900,000 has been paid to repair the Aircraft.

SIA and its Insurer filed suit against GE, seeking to “recover the costs incurred in connection with the repair of the Aircraft Damage,” the consequential damage to the wing,

setting forth several tort and warranty claims. The complaint contains six causes of action, each arising from the alleged malfunction of the GE engine. They are as follows: (1) ordinary negligence; (2) gross negligence; (3) independent tort based upon GE's negligent violation of the duty of care in manufacturing and selling engines that were free from defects and creating and issuing the service bulletin; (4) independent tort based upon GE's gross negligence as the conduct was willful and wanton; (5) breach of implied warranties of merchantability and fitness; and (6) breach of warranties of merchantability and fitness for a particular purpose.

During oral argument, plaintiffs withdrew the first cause of action for ordinary negligence in light of the liability limiting provisions in the GTA (Tr. at 23 and 42). Furthermore, during oral argument, this Court dismissed the fifth and sixth causes of action as deemed abandoned. Thus, this decision addresses the second, third and fourth causes of action.

Discussion

I. The Independent Duties alleged by plaintiffs

GE argues that plaintiffs' allegations of "independent" tort duties are duplicative of implied contractual duties and should therefore be dismissed. On this point, GE relies on the principle that: "a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated" *Dormitory Auth. of the State of N.Y. v Samson Constr. Co.*, 30 NY3d 704, 711 [2018][internal citation omitted]. In *Dormitory Auth.*, the Court of Appeals acknowledges that this independent duty may be imposed based upon the nature of the services, specifically where a failure to perform the service carefully can have catastrophic consequences, but limits this path to recovery by stating: "[h]owever, we have made clear that 'where plaintiff is essentially seeking enforcement of the bargain, the action should proceed under a contract theory'" (*id.* at 711 [citation omitted]).

Specifically, GE argues that the GTA covers the conduct alleged in this claim and that plaintiffs seek identical relief for the alleged breaches of the contractual and “independent” duties of care: the reimbursement of the costs paid by SIA’s insurer for the repair of the aircraft’s wing. GE argues that “where the factual allegations supporting the tort claim are identical to those claims that could arise under the contract, the independent tort claim is duplicative and should be dismissed” (GE memorandum of law at 19-20).

According to plaintiffs’ allegations, the independent tort claims arise from GE’s role as a leading commercial aircraft engine manufacturer responsible for conducting its business operations in a safe manner as the lives of the flying public, aircraft crew members and people on the ground depend upon GE for this duty of care that goes beyond GE’s contractual duties.

As set forth in the complaint, plaintiffs’ third cause of action, independent tort for negligence is not different from the first cause of action for negligence. In support of their claim for ordinary negligence, plaintiffs allege that GE as a “commercial aircraft engine manufacturer owed a duty of care to SIA and other operators of those engines, as well as the passengers and crew who fly on aircraft equipped with such engines, and the public below, to design, manufacture, sell and supply such engines . . . free from defects and that operated properly and safely” (complaint, ¶ 52). In this first cause of action, plaintiffs further allege that GE further breached its duty of care by failing to advise in the Service Bulletin, or otherwise, of the risk of catastrophic failure and/or engine fire, and that the engines were dangerous as a result of the possibility of the fuel leak that could occur. In this allegation, plaintiffs further allege the deficiency of the language in the Service Bulletin. Likewise, in the third cause of action, plaintiffs allege that GE had an obligation separate from the obligation contained in the GTA, due to the threat to the passengers, crew and the public, and that the engines were defective and

dangerous due to the possibility of fuel leaking. Finally, that GE breached its duty of care because the Service Bulletin did not fully and accurately advise of the nature of the fuel leakage defect.

Plaintiffs rely on the Court's decision in *Sommer v Federal Signal Corp.* (79 NY2d 540 [1992]), to make the argument that because GE manufactures and sells aircraft engines, public policy, and not the terms of the parties' contract, governs. Plaintiffs quote the decision in *Sommer* on this point: "Professionals, common carriers and bailees, for example, may be subject to tort liability for failure to exercise reasonable care, irrespective of their contractual duties" (*id.* at 551).

The Court in *Sommer* held that, despite the terms of the contract that the plaintiff had with the defendant fire alarm company, the New York City fire regulations provide penalties for failure to transmit alarms and to provide qualified station operators, and permitted the plaintiff's tort claims to proceed:

"New York City's comprehensive scheme of fire-safety regulations requires certain buildings---including 810's---to have central station fire service (Administrative Code of City of New York § C26-1704.5[f], [g] Central station operators, in turn, are franchised and regulated by the City, and may be penalized for failing to transmit alarm signals, provide qualified operators, Fire alarm companies thus perform a service affected with a significant public interest, failure to perform the service carefully and competently can have catastrophic consequences. The nature of Holmes' services and its relationship with its customer therefore gives rise to a duty of reasonable care that is independent of Holmes' contractual obligations.

"Our conclusion rests as well on the manner in which the injury arose in this case and the resulting harm, both typical of tort claims. In contrast to the tile purchaser in *Bellevue* or the general contractor in *Clark- Fitzpatrick*, 810 is not seeking the benefit of its contractual bargain, but instead seeks recovery of damages for a fire that spread out of control -- the sort of 'abrupt, cataclysmic occurrence' referred to in *Bellevue*"

(*id.* at 552-553).

Plaintiffs argue that GE's independent duty of care is also supported by the extensive laws and regulations that govern its manufacture, sale and servicing of engines. GE, plaintiffs assert, operates in a highly regulated industry. GE is under duties imposed by federal law. Specifically, as set forth in the Federal Aviation Regulations, GE is obligated to "design and manufacture engines that are not defective and that do not pose a threat to the safety of the traveling public" (plaintiffs' memorandum in opposition at 24). In their opposition, plaintiffs cite specific federal statutes and regulations that regulate the design and construction of aircraft engines.

In reply, GE argues that the Court of Appeals, in its decision in *Dormitory Auth. of the State of N.Y.*, reasoned that although there are circumstances where a professional architect may be subject to a tort claim for failing to exercise due care in the performance of its contractual obligations, there are instances where the language of the contract is the final guiding principle between the parties. The Court stated:

"The only damages alleged under either theory of recovery are the additional expenses required to complete the project, including the costs to repair the damage to adjacent structures. Significantly, in the contract itself, the parties contemplated Perkins' responsibility for additional costs or expenses incurred by DASNY or the client . . . as a result of the architect's design errors or omissions, and addressed it in the contract terms"

(*Dormitory Auth. of the State of N.Y.*, 30 NY3d at 712).

GE concludes that the language of the limitation of liability clause undermines any negligence claim based upon damage to the engine or the aircraft.

During oral argument, the plaintiffs withdrew their first cause of action in negligence, because of the limitation of liability provisions in the GTA, stating:

"Mr. Carlsen: I agree that the liability limiting provisions in the contract would bar my ordinary negligence cause of action

The Court: So, I am dismissing? Are you withdrawing it or should I dismiss it?
Mr. Carlsen: I will withdraw it”

(Tr at 23).

Plaintiffs continued, on this point:

The Court: If you have already withdrawn the negligence cause of action how do you have an independent tort based on the same negligence?

Mr. Carlsen: When I say I withdrew it, I said I didn't withdraw it in the independent tort.

The Court: I agree, but I'm telling you if the underpinning is negligence, there is no duty in negligence. How do you have a duty in the independent tort?

Mr. Carlsen: Because your honor, I withdrew the simple negligence claim because I agreed that the liability limiting provisions prevents me from proceeding in negligence. The claims for independent tort sit completely outside and independent of the contract. They're not affected at all by the liability limiting provisions in the contract. . . . This duty of independent tort where the source of that is basically public policy, the courts have said there are certain situations where the public policy of this state, the laws and regulations of this state and the United States, the nature of the services that you provide, if they affect great portions of the public and particularly if you do them improperly, you will endanger great portions of the public. The source of the independent tort there sits outside the contract, it's something imposed by some other factor”

(Tr. at 42-43).

On this point, that GE owed a duty to plaintiffs independent of the contract and based in public policy, plaintiffs rely on the Court's decision in *Sommer*, cited above, in which the Court sought to determine whether the plaintiff's claims fell into the limitation of liability clause in the contract or whether they sounded in negligence. The Court spoke of the “borderland between tort and contract” (*id.* 79 NY2d at 550): “These borderland situations most often arise where the parties' relationship initially is formed by contract, but there is a claim that the contract was performed negligently” (*id.* at 551). The Court continued:

“A legal duty independent of contractual obligations may be imposed by law as an incident to the parties' relationship. Professionals, common carriers and bailees, for example, may be subject to tort liability for failure to exercise reasonable care,

irrespective of their contractual duties. In these instances, it is policy, not the parties' contract, that gives rise to a duty of due care"

(*id.*, 551-552 [internal citations omitted]).

In *Sommer*, the Court of Appeals found that because of the nature of the defendant's service, as a fire alarm company, which is a service affected with a significant public interest, failure to perform the service carefully can have catastrophic consequences. For this reason, the nature of defendant's relationship with its customers gives rise to a duty that is independent of its contractual obligations.

In the later decision, *Dormitory Auth. of the State of N.Y. v Samson Constr. Co.* (30 NY3d 704), the Court of Appeals again sought to "disentangle tort and contract claims" (*id.*, 30 NY3d at 713). On this point, the Court re-visited its decision in *Sommer*, and stated

"we focused in *Sommer* both on potential catastrophic consequences of a failure to exercise due care and on the nature of the injury, the manner in which it occurred, and the resulting harm. We distinguished between the situation where the harm was an 'abrupt, cataclysmic occurrence' not contemplated by the contracting parties and one where the plaintiff was essentially seeking enforcement of contract rights" (*id.* [internal citations omitted]).

To resolve the dispute as to whether the negligence claim was duplicative of the breach of contract claim before the Court, the Court concluded:

"Here, the C&D building settled during the course of several months, damaging adjacent structures. However, even if any 'abrupt' or 'catastrophic' consequences either could have or did result from Perkins' alleged negligence, the fact remains that the only damages alleged appear to have been within the contemplation of the parties under the contract—and, indeed, as set forth above, are identical for both claims. Put another way, there was no injury alleged here that a separate negligence claim would include that is not already encompassed in DASNY's contract claim. In these circumstances, DASNY 'is essentially seeking enforcement of the bargain,[and] the action should proceed under a contract theory'"

(*id.* at 713 [internal citation omitted]).

Likewise, here, the language in the GTA Article XI's limitation of liability clause states:

“the liability of Seller to Airline arising out of, connected with, or resulting from the manufacture, sale, possession, use of handling of any Product (including Engines installed on Airline’s aircraft as original equipment) or the furnishing of services, whether in contract, tort (including negligence) or otherwise, shall be as set forth in the Product Support Plan included in Exhibit B hereof, and shall not in any event exceed the purchase price of the Product, service or other thing giving rise to Airline’s claim. The foregoing shall constitute the sole remedy of Airline and the sole liability of Seller. In no event shall Seller be liable for special, incidental or consequential damages, including, but not limited to, damage to, or loss of use, revenue or profit with respect to **any aircraft, engine, or part thereof (Bold Added)**”

(Atkins affirmation, exhibit 2 at 11).

Here, the parties contemplated the possibility of damages to the aircraft or the engine. The language in the GTA limited plaintiffs’ recovery to the purchase price of the engine. The fact that the damages arose from a fire in the engine does not take this matter outside of the contract. The damages sought by plaintiffs here were contemplated by the parties at the time they entered into the GTA.

Further, plaintiffs concede during oral argument that this clause bars their cause of action for ordinary negligence. The cause of action in independent tort is likewise barred. Despite plaintiffs’ arguments in their opposition that there are federal statutes and regulations that regulate the construction of aircraft engines, there are no grounds here for this Court to determine that the claims or the damages sought herein are separate and apart from the GTA.

As for plaintiffs concerns about the safety of the passengers, the crew and the public, this Court refers to the words of the Court of Appeals in *Bocre Leasing Corp. v General Motors Corp.* (*Allison Gas Turbine Div.*) (84 NY2d 685 [1995]):

“Contrary to the urgings of the partial dissent, damages relating to the safety of persons and property are simply not an issue in this case. These consumer safety concerns are accounted for by holding manufacturers ultimately liable, as—New York amply does—for those kinds of personal and property injuries and losses which are outside the scope of the contractually based economic losses, attendant to the particular commercial transaction and subject matter. . . Allowing plaintiffs recovery in tort for losses of the

type at issue here, but only in cases where an allegedly ‘unduly hazardous’ product is the source of the commercial contract and dispute, interjects uncertainty in law and commercial transactions risk allocation by bifurcating the legal universes”

(*id.* at 691)

The Court holds that plaintiffs’ claims of negligence are not independent from the requirements set forth under the GTA, and that, on these facts, they are duplicative of any breach of contract claim that could be alleged against GE. As the Court of Appeals stated in *Dormitory Auth. of the State of N.Y.*, even if ‘abrupt’ or ‘catastrophic’ consequences resulted, or could have resulted, from GE’s alleged negligence, the fact remains that the only damages alleged appear to have been within the contemplation of the parties under the contract, which are the damages for the engine and the aircraft wing. For these reasons, this Court dismisses plaintiffs’ cause of action for independent tort.

II. The Economic Loss Rule Precludes Tort Recovery

It is beyond cavil that absent damage to persons or other property, a manufacturer in a commercial relationship is generally not liable in tort to a purchaser of a defective product but is relegated to seek damages pursuant to the negotiated terms of the underlying contract (*East River Steamship Corp. v Transamerica Delaval, Inc.*, 476 US 858 [1986]). In other words, where there is a purely economic loss to the product itself, the purchaser can only seek to recoup the “benefit of the bargain” (*Id.*).

New York has fully adopted this “Economic Loss Rule” in *Bocre Leasing Corp. v General Motors Corp. (Allison Gas Turbine Div.)* 84 NY2d 685 (1995). The rationale for this rule is that the purchaser has the option of obtaining insurance and/or to rely upon certain warranties to protect itself against economic loss. At the time of sale of the product, both parties

are in the “best position to allocate risk” which is “manifested in the sales price” (Id, 84 NY2d at 688).

Citing to *East River Steamship Corp.*, the Court of Appeals noted that [“w]hen a product only injures itself the reasons for imposing a tort duty are weak and those for leaving the party to its contractual remedies are strong” (*Id.* at 690). The exception to this rule is where the product injures a person or causes damage to other property other than itself (*Id.*) In this case, plaintiffs argue that they meet the exception to this rule as damage to the subject wing of its airplane constitutes “other property” damage. While plaintiffs cite many cases, they seem to heavily rely upon *National Union Fire Ins. Co. of Pittsburgh, PA v Pratt and Whitney Canada, Inc.*, 107 Nev. 535 (1991) for the proposition that if a purchaser separately purchases an airplane and later installs the defective engine, similar to the facts of our case, there is no single integrated product but they are unrelated components. Plaintiffs conclude that the wing of the airplane would be an unrelated component subject to tort recovery as “other property” damage. However, this argument is contrary to the negotiated terms of the parties’ contract which expressly included the entire “aircraft, engine, or part thereof” for purposes of tort liability. As such, defendant cannot be held liable in tort for the damage to the engine or wing of the airplane based on the Economic Loss Rule.

In this case, the fire in the engine and the emergency landing of the airplane fortunately neither caused injury to persons nor other defined property damage. As state above, while safety concerns to both persons and other property are paramount to this Court, the Court of Appeals in *Bocre Leasing Corp. v General Motors Corp. (Allison Gas Turbine Div.)* (84 NY2d 685 [1995]) aptly addressed this issue as follows:

“Contrary to the urgings of the partial dissent, damages relating to the safety of persons and property are simply not an issue in this case. These consumer safety concerns are accounted for by holding manufacturers ultimately liable, as—New York amply does—for those kinds of personal and property injuries and losses which are outside the scope of the contractually based economic losses, attendant to the particular commercial transaction and subject matter. . . Allowing plaintiffs recovery in tort for losses of the type at issue here, but only in cases where an allegedly ‘unduly hazardous’ product is the source of the commercial contract and dispute, interjects uncertainty in law and commercial transactions risk allocation by bifurcating the legal universes” (id. at 691).

Based upon the above, this Court need not address the remaining arguments of the parties.

Conclusion

In accordance with the foregoing, it is

ORDERED that defendant General Electric Co.’s motion pursuant to CPLR 3211(a) (1) and (a) (7) (motion sequence 001) is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: New York, New York
December 30, 2019

ENTER:



Hon. ~~SHLOMO S. HAGLER, J.S.C.~~