

State Farm Fire & Cas. Ins. v Pilot Air Frgt., LLC
2022 NY Slip Op 35102(U)
June 13, 2022
Supreme Court, Queens County
Docket Number: Index No. 717041/2020
Judge: Lance Evans
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LANCE EVANS IAS Part 32
Justice

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STATE FARM FIRE AND CASUALTY
INSURANCE as Subrogee of LENSLOUD,
LLC,

Index Number: 717041/2020

Plaintiff(s),

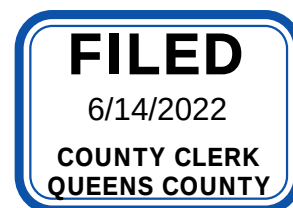
- against -

Sequence Number: 3

PILOT AIR FREIGHT, LLC d/b/a PILOT
FREIGHT SERVICES,

Defendant(s).

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The following papers numbered EF 4- EF 12 read on this motion by defendant seeking an order granting partial summary judgment and dismissal of the balance of the case on behalf of Pilot Air Freight LLC ("Pilot"); Opposition papers numbered EF 13-18; and Reply papers numbered EF 19-23.

Upon the foregoing papers it is **ORDERED** that the defendant's motion for partial summary judgment is **DENIED** as follows:

This action seeks to recover \$78,500 paid to plaintiff's subrogor by the plaintiff insurance carrier for damage to a prototype 3D printer which was shipped by air from Las Vegas to New York by the defendant. The shipper was the plaintiff's subrogor. EEI Global contracted with the defendant, Pilot Air Freight, to ship the item. In the course of being shipped, the item was damaged.

A party seeking summary judgment bears the initial burden of demonstrating its *prima facie* entitlement to the requested relief (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 476 NE2d 642, 487 NYS2d 316 [1985]).

The parties appear to dispute whether the contract issue they raise must be decided pursuant to the Carmack Amendment (49 USC § 14706) to the federal Interstate Commerce Act (49 USC § 101, et seq.). The Carmack Amendment governs the liability of common carriers for loss or damage to goods shipped through interstate commerce, or pursuant to federal common law, Connecticut law, or New York law.

The Carmack Amendment is the exclusive remedy available to shippers for lost or damaged goods shipped by ground transportation through interstate commerce. The Carmack Amendment preempts all state and federal common-law claims (*Project Hope v M/V IBN SINA*, 250 F3d 67, 74 [2d Cir 2001]; *Stein Jewelry Co. v United Parcel Serv., Inc.*, 228 F Supp 2d 304, 307 [SD NY 2002]), unless the contracting parties agree in writing to waive the protections afforded by the amendment (*Great Am. Ins. Co. of New York v TA Operating Corp.*, 2008 WL 5335317, *4, 2008 U.S. Dist LEXIS 101758 [SD NY 2008]; see 49 USC § 14101 [b] [1]). The Carmack Amendment is not applicable to the instant dispute because the subject 3D printer was shipped by air, rather than by ground transportation (see 49 USC § 13102 [16]).

Federal common law applies to the validity of a contractual clause that limits an air carrier's liability (see *Maxine Co., Inc. v Brinks Global Servs. U.S.A., Inc.*, 27 Misc 3d 1221[A], 1221A, 2010 NY Slip Op 50821[U], *2-3 [Sup Ct, NY County 2010; *Kemper Ins. Companies v Federal Express Corp.*, 252 F3d 509, 512 [1st Cir], cert denied 534 U.S. 1020, 122 S. Ct. 545, 151 L. Ed. 2d 423 [2001] [applying federal doctrine of released value to bill of lading provision limiting carrier's liability for its own negligence]). "Federal common law controls the validity of limitations on liability for interstate shipments by any type of common carrier" (*Great Am. Ins. Co. of New York v TA Operating Corp.*, 2008 U.S. Dist. LEXIS 101758, 2008 WL 5335317, *4, citing *Nippon Fire & Marine Ins. Co. Ltd. v Skyway Freight Sys. Inc.*, 235 F3d 53, 60 [2d Cir 2000]).

In *Lentini v Delta Air Lines, Inc.*, 159 AD3d 802, 802-805 [2d Dept 2018], cited with favor by the movant, the Second Department held, under a similar factual predicate, "[a]ccordingly, the Supreme Court should have granted the defendant's motion for summary judgment limiting the plaintiff's potential damages to \$50 pursuant to the air waybill."

Their reasoning was that an air waybill forms the basic contract between a shipper and an air carrier (see *Southern Pac. Transp. Co. v Commercial Metals Co.*, 456 US 336, 342-343, 102 S Ct 1815, 72 L Ed 2d 114 [1982]). In order to enforce a limited liability provision contained in an air waybill, a carrier must demonstrate that its contract satisfies the released-valuation doctrine (see *Treiber & Straub, Inc. v U.P.S., Inc.*, 474 F3d 379, 385-386 [7th Cir 2007]; *King Jewelry, Inc. v Federal Exp. Corp.*, 316 F3d 961, 965 [9th Cir 2003]).

Under the released-valuation doctrine, the shipper "is deemed to have released the carrier from liability beyond a stated amount" in exchange for a low shipping rate (*Deiro v American Airlines, Inc.*, 816 F2d at 1365). The shipper is bound by the limited liability provision if he or she (1) has reasonable notice of the rate structure, and (2) is given a fair opportunity to pay a higher rate in order to obtain greater protection (see *id.*; emphasis

added). Stated a different way, "[l]imited liability provisions are *prima facie* valid if the face of the contract (or, in this case, air waybill) recites the liability limitation and 'the means to avoid it' " (*Read-Rite Corp. v Burlington Air Express, Ltd.*, 186 F3d 1190, 1198 [9th Cir 1999], quoting *Royal Ins. Co. v Sea-Land Serv. Inc.*, 50 F3d 723, 727 [9th Cir 1995]). The fact that the language setting forth the limited liability provision is found on the reverse side of the air waybill will not render the provision unable to satisfy the released-valuation doctrine (see *Hill Const. Corp. v American Airlines, Inc.*, 996 F2d 1315, 1318 [1st Cir 1993]; *Husman Const. Co. v Purolator Courier Corp.*, 832 F2d 459, 461-462 [8th Cir 1987]). "The issue of adequate notice of the terms and conditions contained in a passenger ticket for interstate transportation is a question of law to be determined by the Court" (*Gluckman v American Airlines, Inc.*, 844 F Supp 151, 160-161 [SD NY 1994]).

However, and distinguishable from *Lentini*, here there is no proof that the shipper signed the waybill before it was generated, thereby conferring notice of its provisions, or was offered the opportunity to purchase additional insurance. In *Lentini*, "the air waybill" was "**signed** by the plaintiff's shipper." (*Lentini*, *supra* at 804; *emphasis supplied*).

The affidavit of Ivin Bellen, states, in pertinent part:

4. At no time did I, or any representative from Lenscloud, LLC, contract with Pilot Air Freight LLC d/b/a Pilot Freight Service for the delivery my equipment that was damaged, nor is EEI an agent for Lenscloud, LLC.

5. The signature that is represented at the bottom of the Pilot Air Freight invoice 073406991 was signed *when the equipment was delivered to me on January 22, 2018*, and not January 14, 2018 *when this invoice was generated*. (*Emphasis supplied*).

A close reading of the parties' submissions indicates that these averments are uncontroverted by the affidavit of the defendant's representative, Brian Flower, who artfully avoids the issue. There was no indication of any course of dealings between the parties that would serve to familiarize the shipper with the Conditions of Contract.

Accordingly, the defendant has failed to meet its initial *prima facie* burden on its motion, and the motion is denied in all respects. Based upon the foregoing, the plaintiff's submissions need not be reached by the Court.

Any and all other applications not specifically addressed herein are denied.

In the interest of judicial economy, any motion to reargue,

renew or for reconsideration shall be made by Order to Show Cause returnable before the undersigned only.

The foregoing constitutes the decision and order of this court.

Date: 06/13/22



LANCE EVANS, J.S.C.

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