

Brinks Global Servs. USA, Inc. v D'Amati LLC

2025 NY Slip Op 34504(U)

November 25, 2025

Supreme Court, New York County

Docket Number: Index No. 652765/2022

Judge: Paul A. Goetz

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

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

-----X

BRINKS GLOBAL SERVICES USA, INC.,
Plaintiff,

- v -

D'AMATI LLC, LUVELL, INC., SARKIS KEGEYAN
Defendants.

-----X

INDEX NO. 652765/2022

MOTION DATE 11/07/2024

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 100

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

In this action arising from the theft of jewelry while in transit under plaintiff's care, defendants move pursuant to CPLR § 3212 for partial summary judgment on their twelfth affirmative defense and, consequently, summary judgment dismissing the complaint.

BACKGROUND

On July 10, 2022, defendants-jewelers¹ participated in a gem and jewelry tradeshow in San Mateo, California (NYSCEF Doc No 60 ¶ 5). At the conclusion of the show, defendants contracted with plaintiff to transport their jewelry from San Mateo to another show in Pasadena, California (*id.*). Defendants gave plaintiff two bags of items to transport, each with a declared value of \$50,000 (NYSCEF Doc No 26).

¹ The original defendants to this action were S. Georgios LLC and D'Amati LLC (D'Amati) (NYSCEF Doc No 1), but the action was discontinued as against S. Georgios LLC (NYSCEF Doc No 17). Plaintiff later filed a separate action against Luvell Inc. d/b/a D'Amati Fine Jewelry (Luvell) and Sarkis Kegeyan (Index No 651428/2024, the 2024 action), which was consolidated with the instant action by decision and order dated August 9, 2024 (NYSCEF Doc No 53). The facts are stated as alleged in the complaint in the 2024 action (NYSCEF Doc No 60).

The parties' contract (NYSCEF Doc No 2) provides, in relevant part:

- i. § X.A: "In the event that any of the Property included in the Shipment is lost during the period in which Brink's is responsible, Brink's will pay to You [i.e., defendants] the actual monetary value of the Property which is lost, up to the Declared Value";
- ii. § X.A.2: "If You . . . provide a Declared Value significantly below the actual value of the Shipment, [] You expressly waive all claims against Brink's for that Shipment beyond the following limits: the lesser of (a) the total of all charges payable by You to Brink's under this Contract or (b) U.S. \$500";
- iii. § XI.A: "In the event of any loss or damage to Your Property, You must notify Brink's in writing of Your intention to bring a claim within twenty-four (24) hours after discovery of any loss of or damage to Your Property."

Plaintiff loaded defendants' items (along with items from other jewelers) into its armored tractor trailer (NYSCEF Doc No 60 ¶ 9). At 8:21 p.m., plaintiff's two armed drivers, James Beaty and Tandy Motley, left the San Mateo tradeshow for Pasadena (*id.*). Beaty slept in the sleeping berth of the truck while Motley drove (*id.* ¶ 10). At 2:05 a.m. on July 11, 2022, Motley stopped at the Flying J Truck Stop in Lebec, California (*id.*). Motley went into the Flying J for a meal, leaving Beaty asleep in the sleeping berth (*id.*). When Motley returned to the trailer about 27 minutes later, he realized that a theft had taken place; 22 bags of the 73 bags in the trailer were missing, including one bag belonging to defendants (*id.*).

Plaintiff seeks a judgment: (a) declaring that plaintiff's duties to defendants are governed by the plain language of the contract, including all loss calculations; (b) declaring that "under no circumstances will [plaintiff's] Liability for loss of or damage to [defendants'] Property exceed the lesser of the Declared Value or the actual monetary value of [defendants'] Property as of the date of loss"; (c) in the alternative, declaring that defendants failed to comply with the notification provision of the contract and therefore have waived their claims; and (d) declaring that plaintiff has no liability for "special, incidental, consequential, indirect or punitive losses or

damages including but not limited to loss of profits (whether direct or indirect), loss of market, loss of business, loss of goodwill, lost sales or other indirect or consequential losses, interest, or attorney fees” (NYSCEF Doc No 60). Defendants’ answer raised as their twelfth affirmative defense that “Plaintiff’s claims are barred based on the illegality of its Contract” (Index No 651428/2024, NYSCEF Doc No 8).

Both parties submitted “expert” affirmations of attorneys who opine as to whether the contract should be construed as a contract for insurance (NYSCEF Doc Nos 68, 85, 95). Since this matter presents a domestic legal question, the legal expert opinions were not considered (*South32 Chile Copper Holdings Pty Ltd v Sumitomo Metal Min. Co., Ltd.*, 2025 NY Slip Op 02892, *2 [1st Dept, May 13, 2025] [legal expert opinions appropriate to inform the court on matters of foreign law]).

Additionally, following the submission and oral argument on the motion, plaintiff “provide[d] notice of a supplemental authority issued in a related action pending in the United States District Court for the Southern District of New York” (NYSCEF Doc No 98), *Brink’s Glob. Servs. USA, Inc. v Bonita Pearl Inc.*, 2025 US Dist LEXIS 112089 [SDNY, June 12, 2025] (NYSCEF Doc No 99 [the federal action]). The court in the Southern District action determined that the contract was not for insurance because its “primary purpose [] was to arrange for the transport of Defendants’ merchandise[,]” and “any risk-shifting effectuated by the Contract was incidental to this primary purpose” (*id.* at *45). This decision will not be entirely “disregarded” as defendants advocate (NYSCEF Doc No 100). However, “lower federal court decisions are not binding on New York state courts” (*Teshabaeva v Family Home Care Servs. of Brooklyn & Queens, Inc.*, 214 AD3d 442, 444 [1st Dept 2023]) and the decision will be considered for its persuasive authority.

DISCUSSION

“It is well settled that ‘the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact’” (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [internal citations omitted]). “Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action” (*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010], citing *Alvarez*, 68 NY2d at 342).

“The court’s function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility” (*Meridian Mgmt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-511 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined “in the light most favorable to the non-moving party” (*Schmidt v One New York Plaza Co.*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*id.*).

Defendants argue that the contract entered into by the parties is an insurance contract because it “contains no affirmative undertaking to transport property”; rather, its “only undertaking . . . is to pay for property that is lost or damaged while Brink’s is responsible for it”

(NYSCEF Doc No 70 [also noting the contract states that misrepresentation of the value of the shipment may be insurance fraud; the invoices set forth a figure described as “Ins. Value”; and plaintiff’s tradeshow manager understood the contract to be one for “transportation insurance”]). Defendants argue that since plaintiff is not authorized to operate as an insurance business pursuant to NY Ins Law § 1102, the contract is illegal and unenforceable (*id.*).

In opposition, plaintiff first notes that the contract explicitly states that “Brink’s is not an insurer of Your Shipment” (NYSCEF Doc No 2 [“At all times during the performance of this Contract, [] Brink’s will maintain insurance payable to Brink’s in such amounts and against such risks as to adequately cover the liability assumed by Brink’s under this Contract.”]). Plaintiff asserts that contrary to defendants’ contentions, “the Contract plainly contains an affirmative promise of transportation” (NYSCEF Doc No 73), as the contract defines the “service” to be provided as shipment of property (NYSCEF Doc No 2), and defendants selected the “Door to Door [] Shipment[]” option (NYSCEF Doc Nos 26, 73 [noting that defendants acknowledge in their pleadings that “Luvell agreed to pay Brinks for shipping its valuables” and “Brinks agreed with Luvell to provide secure transportation”]). Plaintiff compares itself to shipping services like UPS and FedEx, asserting that “the primary purpose of the Contract is to provide transport of valuables, not to provide insurance or risk shifting” (NYSCEF Doc No 73).

New York Insurance Law § 1101(a) defines “insurance contract” as “any agreement or other transaction whereby one party, the ‘insurer’, is obligated to confer benefit of pecuniary value upon another party, the ‘insured’ or ‘beneficiary’, dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event.” A “fortuitous event” is “any occurrence or failure to occur which is, or is assumed by the parties

to be, to a substantial extent beyond the control of either party” (*id.*). Defendants assert that plaintiff “contends its drivers did everything right under the law and company policy, and this is the only theft in 35 years of over-the-road operation, which renders this criminal act of third-parties a fortuitous event, i.e. an act out of the control of the parties” (NYSCEF Doc No 70). Plaintiff argues that the theft was not a fortuitous event beyond its control, as plaintiff “retain[ed] control over the shipment throughout the delivery process” (NYSCEF Doc No 73).

“A contract should be read as a whole, with every part interpreted with reference to the whole; if possible, the contract will be interpreted so as to give effect to its general purpose” (*Kaplan v Kaplan*, 179 AD3d 691, 693-94 [2nd Dept 2019], citing *Beal Sav. Bank v Sommer*, 8 NY3d 318, 324-25 [2007]). Here, while the contract fails to include any clear statement of purpose, preamble, or recitals, there are other indications of its primary purpose. Most notably, it is titled “valuables transport contract” (NYSCEF Doc No 2). Additionally, the service contemplated is the shipment of property “by air, land or sea” (*id.*, § I.9). The signed portion of the contract—the “show outbound pickup manifest”—specifies that plaintiff is to “deliver” the “carriage” items to “Pasadena Convention Center” (NYSCEF Doc No 26 [Kegeyan signing over the line for “Shipper Signature”]). Taken together, these provisions of the contract support the conclusion that its primary purpose was to transport goods from point A (San Mateo) to point B (Pasadena).

The transportation purpose is confirmed by the facts leading to the parties’ agreement. First and foremost, defendants needed to get their goods from one tradeshow to another. While plaintiff’s promise to “pay to [defendants] the actual monetary value of the property . . . [i]n the event that any of the Property included in the shipment is lost during the period in which Brink’s is responsible” (NYSCEF Doc No 2 § X.A) may have been an incentive for defendants to enter

the contract, it does not transform it into an insurance contract. Moreover, the invoice includes a base charge, dedicated pickup, fuel surcharge, security surcharge, show organization fee, show to show transfer fee, and weight charge (NYSCEF Doc No 67, Ex. A). These charges are indicia of transportation, not insurance.

Moreover, as noted in the federal action, plaintiff’s “responsibility for a Shipment begins when [it] physically takes possession of the Shipment . . . [and] ends when [it] delivers the Shipment” (NYSCEF Doc No 2 § IX.A). During this time, it is plaintiff’s responsibility to take steps to prevent theft and ensure that the property is transported securely (*Brink’s Glob. Servs. USA, Inc.*, 2025 US Dist LEXIS 112089 at *46). Thus, a loss occurring during transit is not “substantial[ly] beyond the control of either party” as required to constitute a “fortuitous event” within the meaning of NY Ins Law § 1101(a)(2). In the cases cited by defendants, the alleged insurer’s “obligation was not related to the quality or efficiency of” the product or service it provided (*Gerenstein v Weiner*, 9 Misc 2d 259, 260 [App Term, 2nd Dept, 1957] [“Insofar as these contracts obligated plaintiff to replace parts which he had not manufactured or sold they are contracts of insurance”]; *Ollendorff Watch Co. v Pink*, 279 NY 32, 36 [1938] [a contract is for insurance where it has “nothing to do whatever with” the quality of the service or product provided]). Here, in contrast, plaintiff had “substantial control over the types of the events that would otherwise subject it to liability, because the purpose” of its service was to provide secure transportation of defendants’ valuable property (*Petro, Inc. v Serio*, 9 Misc 3d 805, 817-18 [SC NY Co 2005]).


Accordingly, defendants’ motion for partial summary judgment on its twelfth affirmative defense—and for summary judgment dismissing the complaint—will be denied.

CONCLUSION

Based on the foregoing, it is

ORDERED that defendants' motion for summary judgment on their twelfth affirmative defense is denied; and it is further

ORDERED that the parties are directed to appear for a compliance conference on December 11, 2025 at 9:30 a.m.


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<u>11/25/2025</u>			<u>PAUL A. GOETZ, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE