

Mokadmini v Hop Hing Realty Corp.

2013 NY Slip Op 33678(U)

December 11, 2013

Sup Ct, New York County

Docket Number: 106780/10

Judge: Paul Wooten

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

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

ABDEL MONAM MOKADMINI AND AMY LYNE,

Plaintiffs,

INDEX NO. 106780/10

MOTION SEQ. NO. 007

- against -

HOP HING REALTY CORP., SELINA SHIH, WEITZNER SHIH, BAYA, INC., BAYA MOVERS d/b/a INTERSTATE TRANSPORT MOVING & STORAGE, JOHN LOPEZ and FRANK LOPEZ,
Defendants.

FILED

DEC 13 2013

COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to 4, were read on this motion by defendant for summary judgment.

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

PAPERS NUMBERED

1, 2

Answering Affidavits — Exhibits (Memo) _____

3

Replying Affidavits (Reply Memo) _____

4

Cross-Motion: Yes No

Abdel Monam Mokadmini and Amy Lyne (plaintiffs) commenced this action for damages sounding in conversion, breach of bailment contract, negligence and recklessness, arising out of the loss or conversion of their personal property when they were evicted from their apartment at 238 Mott Street, Apartment 4C on August 25, 2008. Baya Movers d/b/a Interstate Transport Moving & Storage (Baya) were hired by Hop Hing Realty Corp. (Hop Hing), the entity that owns and manages the subject property where the apartment is located, to remove all of the belongings from plaintiffs' apartment. Baya issued to Hop Hing a Combination Storage Contract and Bill of Lading, dated August 25, 2008, which was the moving and storage agreement between the parties. According to Baya, plaintiffs have since settled with defendants Hop Hing, Selina Shih, and Weitzner Shih and the action has been discontinued against them. Discovery in this matter is complete and the Note of Issue has been filed.

Before the Court is Baya's motion for summary judgment dismissing plaintiffs' complaint as asserted against it, pursuant to CPLR 3212. Baya maintains that pursuant to UCC § 7-404, plaintiffs are bound by the Bill of Lading and Storage Contract issued by Baya to Hop Hing which contain the terms regarding the removal and storage of plaintiffs' belongings. Baya argues that the Bill of Lading requires claims to be presented to Baya in writing within 60 days after delivery of the goods and prior to filing any lawsuit, which plaintiffs have failed to do. Additionally, Baya states that this action is barred by the twelve-month statute of limitations set forth in the Bill of Lading. Lastly, Baya proffers that it is entitled to enforce its contractual thirty cents per pound per article limitation pursuant to New York Transportation Law § 181 and UCC § 7-204.

In opposition, plaintiffs argue, *inter alia*, that there was no EBT testimony or affidavit from someone with personal knowledge that addresses the issue as to whether plaintiffs' property was lost or converted by Baya. Plaintiffs contend that they are strangers to the Bill of Lading and Storage Contract between Hop Hing and Baya, and as such are not bound by the terms of said contract under UCC § 7-404, which plaintiff believes is inapplicable here. Moreover, since plaintiffs were not parties to the contract between Hop Hing and Baya, plaintiffs proffer that they cannot be held to the terms including the shortened statute of limitations, notice of claim requirement, and limitation of damages. Finally, plaintiffs argue there are triable issues of fact regarding whether Baya converted their property which requires denial of the motion.

In reply, Baya asserts, among other things, that notwithstanding plaintiff's arguments to the contrary, they are bound by the contract between Hop Hing and Baya since plaintiffs were lawfully evicted from the apartment by Hop Hing, and Hop Hing was acting as the legal agent for plaintiffs.

DISCUSSION

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; CPLR 3212[b]). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]). Once a prima facie showing has been made, however, "the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; see also *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; CPLR 3212[b]).

When deciding a summary judgment motion, the Court's role is solely to determine if any triable issues exist, not to determine the merits of any such issues (see *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The Court views the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). If there is any doubt as to the existence of a triable issue, summary judgment should be denied (see *Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

The Court finds that Baya's motion for summary judgment should be denied because triable issues of fact exist as to whether Baya or any of its employees converted plaintiffs' personal property for its/their own use such that Baya may not be able to enforce any limitation upon its liability (see *I.C.C. Metals v Municipal Warehouse Co.*, 50 NY2d 657 [1980] ["if the

warehouse converts the goods . . . strong policy considerations bar enforcement of any such limitation upon its liability]; see also Uniform Commercial Code § 7-204(2)). As such, the herein motion is denied.

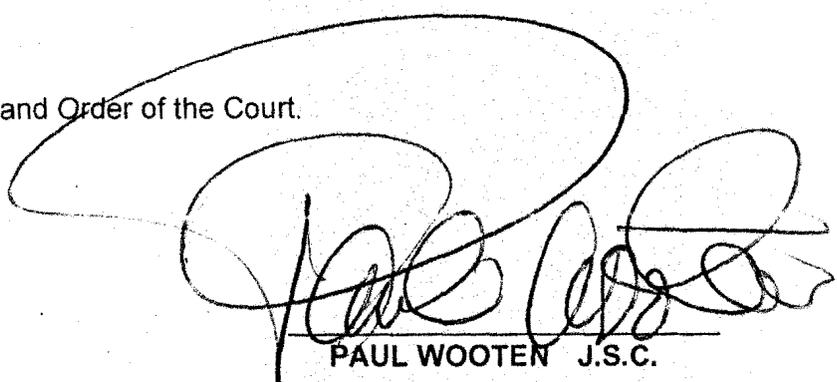
CONCLUSION

Accordingly, it is hereby

ORDERED that defendant Baya's motion for summary judgment is denied; and it is further,

ORDERED that counsel for defendant Baya is directed to serve a copy of this Order with Notice of Entry upon all parties.

This constitutes the Decision and Order of the Court.



PAUL WOOTEN J.S.C.

Dated: 12/11/13

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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