

Commonwealth of Massachusetts
County of Middlesex
The Superior Court

Civil Docket MICV2007-01499

RE: Leone et al v C.T.L. Inc., d/b/a Capitol Trailer Leasing et al

TO: Donald F Borenstein, Esquire
Johnson Law Offices (Mark B)
12 Chestnut Street
Andover, MA 01810-3706

CLERK'S NOTICE

This is to notify you that in the above referenced case the Court's action on **03/09/2009**:

RE: Deft C.T.L. Inc., d/b/a Capitol Trailer Leasing's MOTION for Summary Judgment, pursuant to Mass.R.Civ.P. 56, memo of law in support of, rule 9A(b)(5) statement of undisputed facts, plffs opposition, rule 9A affidavit of Donald F. Borenstein, Esq.

is as follows:

**Motion (P#9) ALLOWED (See Memo). Dated 3/6/09 (Thomas R. Murtagh, Justice)
Notices mailed 3/9/2009**

Dated at Woburn, Massachusetts this 9th day of March,
2009.

Michael A. Sullivan,
Clerk of the Courts

BY:

Wayne Emerson
Assistant Clerk

Telephone: 781-939-2772

Copies mailed 03/09/2009

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 07-01499-C

MICHAEL F. LEONE & another¹

vs.

C.T.L., Inc. d/b/a CAPITOL TRAILER LEASING

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

The plaintiffs, Michael F. Leone and Donna R. Leone (collectively, "the Leones") brought this action against CTL, Inc. ("CTL") seeking compensation for breach of contract, negligence and breach of G. L. c. 93A for the damage to their property while stored in the container unit rented from CTL. CTL now moves for summary judgment on all three counts. For the reasons set forth below, this motion is **ALLOWED**.

BACKGROUND

On October 1, 2003, the Leones contacted CTL and ordered a commercial storage unit for delivery to a house at 38 Fairmeadow Road, Wilmington, Massachusetts ("Property"). The parties signed a written contract, wherein CTL agreed to deliver and pick up the storage unit from the Property. CTL was not responsible for moving Leones' personal property in and out of the storage unit and the Leones retained sole access to the interior of the storage unit by the use

¹ Donna R. Leone

of their own padlock on the storage unit doors. When CTL delivered the storage unit, the Property was vacant and undergoing renovation. When CTL came to drop of the storage unit, the Leones determined where to place it on their Property.

In addition to signing the contract, the Leones also signed a bold-stamped term on the face page of the contract stating:

Lessor shall not be liable for loss or damages to any property left stored or transported by customer or any other person in or upon vehicle either before, during or after the return thereof to Lessor whether or not said damage was caused by or related to the negligence of Lessor, its agents, servants, employees or equipment.

In addition, the Contract contained the following "Conditions of Lease Agreement":

4. . . . Lessee drives or uses the same [rental, use or operation of vehicle] at his own risk and specifically assumes the risk of injury or damages to all parties or property, third parties and cargo. . .

. . .
5. . . . WARRANTY FOR MERCHANTABILITY AND FITNESS: Lessee agrees that there are no warranties, express or implied, and all warranties of any kind, including specifically any express or implied warranty of merchantability and fitness for purpose, are hereby excluded both as to leased equipment and on to any maintenance or repair work performed by the Lessor on the equipment leased hereunder.

. . .
6. Lessee hereby specifically indemnifies Lessor, and agrees to hold Lessor harmless, against all loss and damages Lessor may sustain or suffer because of: . . . (d) . . . damages to the property of any third person as a result of, in whole or in part, the use or condition of said equipment or any thereof while in the custody, possession or control of Lessee . . .

. . .
16. This instrument contains the entire agreement between the parties pertaining to the subject matter hereof. No agreements, representations, or understandings not specifically contained herein shall be binding upon any of the parties hereto unless reduced to writing and signed by the parties to be bound thereby . . .

On August 25, 2004, CTL picked up the storage unit from the Property at the Leones' request.

DISCUSSION

A. Standard of Review

This court grants summary judgment where there are no genuine issues of material fact and where the moving party is entitled to summary judgment as a matter of law. Mass. R. Civ. P. 56(c); 369 Mass. 550, 553 (1976). The moving party bears the burden of demonstrating affirmatively the absence of a triable issue, and that the moving party is entitled to judgment as a matter of law. Pederson v. Time, Inc., 404 Mass. 14, 16-17 (1989). A party moving for summary judgment who does not bear the burden of proof at trial may demonstrate the absence of a triable issue by showing that the nonmoving party has no reasonable expectation of proving an essential element of its case at trial. Flesner v. Technical Commc'ns Corp., 410 Mass. 706, 716 (1991). Once the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts establishing the existence of a genuine issue of a material fact. Id. at 17. The nonmoving party cannot defeat the motion for summary judgment by resting on his or her pleadings and mere assertions of disputed facts. LaLonde v. Eissner, 405 Mass. 207, 209 (1989).

B. Breach of Contract

Massachusetts imposes an implied warranty of merchantability in a lease if the lessor is a merchant with respect to the goods. G. L. c. 106, § 2A-212(1). Under G. L. c. 106 § 2-316(2), the lessor can exclude or modify the implied warranty of merchantability so long as the exclusion

is in writing and is conspicuous. Here, the Leones admitted to signing the separate document which conspicuously states that Lessors will not be liable for any damages to the property stored in the storage unit even if the damage was caused by Lessor's negligence. This document functions as a disclaimer to any implied warranty. Furthermore, the statute states that words limiting or negating warranty are subject to the provisions of the parol or extrinsic evidence rule, to the extent that such construction is not considered unreasonable. G. L. c. 106 §2-316(1). The parol evidence rules states:

[t]erms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented (a) by course of dealing or usage of trade (section 1-205) or by course of performance (section 2-208); and (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Here, the contract's integration clause stated:

This instrument contains the entire agreement between the parties pertaining to the subject matter hereof. No agreements, representations, or understandings not specifically contained herein shall be binding upon any of the parties hereto unless reduced to writing and signed by the parties to be bound thereby ...

In light of the parol evidence rule, the integration clause here makes the terms of the contract binding on both parties. Thus, the Leones cannot argue that oral or other communications with CTL that the storage trailer would be appropriate for long-term storage of their personal items should supplement the signed written agreement. The signed documents

between the two parties sufficiently negate CTL's responsibility towards the Leones' personal property stored in the storage unit.

C. Negligence

For a negligence claim to survive summary judgment, the plaintiff must establish that (1) the defendant owed a particular legal duty to the plaintiff, (2) defendant breached the duty, (3) defendant's breach of that duty caused the plaintiff some harm, and (4) the plaintiff suffered actual damages as a result. Doe v. Senechal, 66 Mass. App. Ct. 68, 76 (2006). Whether one has a legal duty to another is a question of law. Vaughan v. Eastern Edison Co., 48 Mass. App. Ct. 225, 226 (1999). A legal duty generally arises under two circumstances. First, the defendant voluntarily assumes a duty to protect the plaintiff from harm. Mullins v. Pine Manor College, 389 Mass. 47, 52 (1983). Second, there is a special relationship recognized by common law under which the defendant owes a duty to the plaintiff. Irwin v. Ware, 392 Mass. 745, 756 (1984). Special relationships are based on a uniform set of considerations. Id. "Foremost among these is whether a defendant reasonably could foresee that he would be expected to take affirmative action to protect the plaintiff and could anticipate harm to the plaintiff from the failure to do so." Id.

Here, CTL disclaimed any duty towards the Leones by including language in the contract whereby the Leones voluntarily assumed the risk for any injury or damage to their property. This released CTL from any liability for any loss or damage suffered while using the storage unit. Massachusetts law favors the enforcement of releases.

A party may, by agreement, allocate risk and exempt itself from liability that it might subsequently incur as a result of its own negligence . . . There can be no doubt . . . that under the law of Massachusetts . . . in the absence of fraud a person

may make a valid contract exempting himself from any liability to another which he may in the future incur as a result of his negligence or that of his agents or employees acting on his behalf . . .

Sharon v. Newton, 437 Mass. 99, 105 (2002) (internal citations omitted). The courts have refused to enforce releases where there was an obvious disadvantage in bargaining power, putting a party at the mercy of the other's negligence. Gonsalves v. Commonwealth, 27 Mass. App. Ct. 606, 608 (1989).

Here, there is no evidence of unequal bargaining power or fraud by CTL. The Leones' knowingly signed the contract and chose to store their personal property in storage units that were not temperature and humidity controlled. Thus, the valid release negates CTL's duty to protect Leones' personal property stored in the storage unit.

Furthermore, CTL did not have any control over how the storage unit was treated once left on the Property. The harm caused to the storage unit was unforeseen and CTL had no affirmative duty to prevent such harm.

D. Violation of Chapter 93A

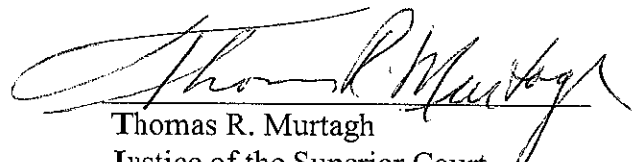
The Massachusetts Consumer Protection Statute, G. L. c. 93A, states that "unfair or deceptive acts or practices in the conduct of any trade or commerce" are unlawful. Whether a particular conduct in its factual settings is unfair or deceptive is a question of fact, but the boundaries of what conduct may constitute as a violation of 93A claim is a question of law. Chervin v. The Travelers Ins. Co., 448 Mass. 95, 112 (2006). An act is unfair if, "it is (1) within the penumbra of a common law, statutory, or other established concept of fairness; (2) immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to competitors or other

business people.” Morrison v. Toys-(R)-Us, Inc., 441 Mass. 451, 457 (2004). Nothing in the facts suggest that CTL misrepresented or fraudulently coerced the Leones into signing the contract. Moreover, there is no indication that the Leones did not understand the content of the contract or had any questions or concerns about the contract before signing it. Thus, the Leones’ allegations do not fall within the boundaries of a deceptive and unfair act or practice under 93A.

ORDER

For the foregoing reasons, CTL’s motion for summary judgment is **ALLOWED**.

DATED: March 6 , 2009


Thomas R. Murtagh
Justice of the Superior Court

This action came on to be heard before the Court, Thomas R. Murtagh, Justice, presiding, upon motion of the defendant(s), C.T.L. Inc., d/b/a Capitol Trailer Leasing, for Summary Judgment pursuant to Mass. R. Civ. P. 56- the parties having been heard - and the Court having considered the *pleadings-depositions-answers to interrogatories- admissions- and affidavits, finds there is no genuine issue as to material fact and that the defendant is entitled to a judgment as a matter of law,

It is **ORDERED** and **ADJUDGED**:

That the Complaint of the Plaintiff (s), Michael F. Leone, Donna R. Leone be and hereby is **DISMISSED** against the Defendant (s), C.T.L. Inc., d/b/a Capitol Trailer Leasing, with costs.

Dated at Woburn, Massachusetts this 6th day of March, 2009.

By: Wayne Emerson
Assistant Clerk