

New York Commercial Division Round-Up

News & Updates on Cases Decided in the Commercial Division of the New York State Supreme Court

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[Failure to Identify Full Value of Goods Fatal to Damages Claim](#)

By [Lisa Lewis](#)

On April 21, 2010, Judge Eileen Bransten of the Commercial Division issued a decision granting summary judgment in favor of defendant Brinks Global Services U.S.A. Inc. (“Brinks”) in a breach of contract and negligence action brought by plaintiff Maxine Company, Inc. (“Maxine”). *See Maxine Co. Inc. v. Brinks Global Services U.S.A., Inc.*, Index No. 602233/05, 2010 NY Slip Op. 50821 (Sup Ct, NY County, April 21, 2010). Maxine is a high-end wholesale and retail jeweler that hired Brinks, a security service, to pick-up, transport and deliver 157 items of fine jewelry from New York City to a department store in Virginia. Although the full retail value of the jewelry was alleged by Maxine to be in excess of \$6 million, for reasons that are unclear, Maxine declared the value of the jewelry at only \$2 million and did not identify the jewelry as fragile.

The jewelry was shipped pursuant to an airbill (the “Airbill”) which contained provisions limiting Brinks’ liability with regard to loss or damage to Maxine’s property. The Airbill states that “Brink’s will pay to [Maxine] the actual monetary value of the Property which is lost or damaged (to the extent of such damage) on the date of loss, up to the value declared for carriage, subject to the terms and limitations contained in this Contract.” However, the Airbill further provides that, “[n]otwithstanding the foregoing, should [Maxine] fail to identify a fragile item and pay additional charges if required by Brink’s, Brink’s liability shall be limited to loss only, and not for damage.”

Maxine claimed that 49 pieces of jewelry were damaged while in Brink’s possession and Brink’s refused to reimburse Maxine for the alleged damage. Maxine initiated the lawsuit seeking \$731,900 in compensatory damages plus lost profits and attorneys’ fees for breach of contract and negligence. Brinks filed a motion seeking summary judgment dismissing the complaint in its entirety or, in the alternative, granting Brinks partial summary judgment on the issue of damages. In support of the motion, Brinks argued that Maxine did not comply with conditions precedent to liability for items damaged during transit pursuant to the terms of the Airbill. In opposition, Maxine argued (1) that the Airbill was not enforceable because it was a contract of

adhesion and (2) that the provisions which Brinks relied upon were not conditions precedent to recovery.

Judge Bransten rejected the argument that the Airbill was a contract of adhesion. Specifically, the Court stated that “[t]he record is wholly devoid of evidence that Brinks employed high-pressure tactics or deceptive or unconscionable language, or that grossly unequal bargaining power or fraud existed.” Indeed, Judge Bransten noted that “Maxine is a sophisticated business, employing sophisticated business people and that it has shipped goods with Brinks many times over a period of years.” Therefore, the Court found that, in shipping its property with Brinks, “Maxine agreed to all terms and conditions set forth in the Airbill and [] is bound by those terms.”

As set forth above, the Airbill provides that Maxine agreed to identify any fragile items included in the shipment and declare the full value of the property for customs and carriage purposes. The Airbill also stated that, if Maxine fails to identify a fragile item, liability shall be limited to loss only. Judge Bransten held that the requirement that Maxine identify fragile items was a valid contractual condition precedent under Connecticut law. There was no real dispute that Maxine did not identify the jewelry. Accordingly, because Maxine was contractually required to declare the jewelry as fragile and did not, Judge Bransten found that Brinks is not liable for the damage to the jewelry and granted summary judgment.

This case highlights the importance of provisions contained in airbills that limit the liability of carriers from both the perspective of the carrier and the shipper. First, for carriers, the case confirms that airbills containing limitations of liability are not considered contracts of adhesion without evidence of high-pressure tactics or deceptive or unconscionable language, or grossly unequal bargaining power or fraud existed. In addition, the case establishes that a shipper will be bound by the terms set forth in the airbill, including conditions precedent to any obligation to reimburse for loss or damage. Furthermore, with regard to shippers, this case emphasizes the importance of reviewing and following the provisions contained in the airbill. In particular, it is important that shippers properly declare or identify their property in accordance with the terms of the airbill. Failure to do so, could result in a lack of recourse for damage or loss of property.

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