DOCKET NO: AANCV186026817S

SUPERIOR COURT

CINOTTI, LUCIA
V.
SOVRAN ACOUISITION LIMITED PARTNERSHIP DBA UNCLE B Et Al

JUDICIAL DISTRICT OF ANSONIA/ MILFORD
AT MILFORD

3/4/2020

ORDER

ORDER REGARDING:
09/30/2019 154.00 MOTION FOR SUMMARY JUDGMENT

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Familiarity with the case law and arguments recited by each party is presumed and need not be generally repeated.

By this lawsuit, the plaintiff brings a claim in negligence against the defendant and moving party, Sovran Acquisition Limited Partnership dba Uncle Bob's Self Storage (Self Storage). More specifically, the plaintiff claims that on or about August 16, 2015, she rented a climate-controlled storage unit at Self Storage and moved nearly all of her belongings into the storage unit. The plaintiff further alleges, inter alia, that on or about February 16, 2016, a water pipe burst at the Self Storage premises and that as a result, her property was damaged or destroyed. Based on the foregoing and other allegations, the plaintiff brings a claim in negligence against Self Storage (Count One), seeking damages in connection with her alleged property losses.

Self Storage has moved for summary judgment on the grounds that, pursuant to written contracts between the parties, the plaintiff released Self Storage from any claims of water damage. Self Storage seeks judgment as a matter of law based on the exculpatory clause.

It is undisputed that on August 16, 2015, the plaintiff signed a document entitled "Rental Agreement - Connecticut," which reads, in part, as follows: "ALL PERSONAL PROPERTY IS STORED BY CUSTOMER AT CUSTOMER'S SOLE RISK. INSURANCE IS CUSTOMER'S SOLE RESPONSIBILITIY. CUSTOMER UNDERSTANDS THAT LANDLORD WILL NOT INSURE CUSTOMERS PROPERTY. As a condition of leasing an enclosed storage Space, Customer must provide insurance protecting the personal property stored Space, Customer must provide insurance protecting the personal property stored within the enclosed storage space against fire, burglary or other damage. Customer expressly releases Landlord from any losses, claims, suits, and/or damages or right of subrogation caused by fire, theft, burglary, water, rain storms, tornado, explosion, riot, rodents, civil disturbances, government action, insects, mildew, mold, black mold, dust, sonic boom, vehicles, unlawful entry or any other cause whatsoever whether property is stored in an enclosed or open storage Space . . . ."

The motion for summary judgment is designed to eliminate the delay and expense accompanying a trial where there is no real issue to be tried. Dowling v. Kielak, 160 Conn. 14, 16, 273 A.2d 716 (1970). The standard of review applicable to motions for summary judgment is well established in our law. "Practice Book § [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party

The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . [I]ssue-finding, rather than issue determination, is the key to the procedure. . . . [T]he trial court does not sit as a trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist." (Brackets in original; internal quotation marks omitted.) Northrup v. Witkowski, 175 Conn. App. 223, 230-31, 167 A.3d 443 (2017). "It is not enough for the moving party merely to assert the absence of any disputed factual issue; the moving party is required to bring forward . . . evidentiary facts, or substantial evidence outside the pleadings to show the absence of any material dispute." (Emphasis in original; internal quotation marks omitted.) Doty v. Shawmut Bank, 58 Conn. App. 427, 430, 755 A.2d 219 (2000). The legal standard applicable to the movant is strict. See Ramirez v. Health Net of the Northeast, Inc., 285 Conn. 1, 11, 938 A.2d 576 (2008) ("courts hold the movant to a strict standard"); Anderson v. Gordon, Muir & Foley, LLP, 108 Conn. App. 410, 416, 949 A.2d 488 (2008). "The test is whether a party would be entitled to a directed verdict on the same facts." (Internal quotation marks omitted.) Doty v. Shawmut Bank, supra, 431.

"[The] law does not favor contract provisions which relieve a person from his own negligence. . . ." (Citation omitted; internal quotation marks omitted.) Hyson v. White Water Mountain Resorts of Connecticut, Inc., 265 Conn. 636, 643, 829 A.2d 827 (2003). "Releases that waive a plaintiff's right to recover in negligence from defendants are governed by Hyson v. White Water Mountain Resorts of Connecticut, Inc., supra, 265 Conn. at 636. In Hyson, the court stated that there is widespread support in other jurisdictions for 'a rule requiring that any agreement intended to exculpate a party for its own negligence state so expressly. See 2 Restatement (Second), Contracts § 195, comment (b) (1981) ('[l] anguage inserted by a party in an agreement for the purpose of exempting him from liability for negligent conduct is scrutinized with particular care and a court may require specific and conspicuous reference to negligence under the general principle that language is interpreted against the draftsman'); 1 E. Farnsworth, Contracts (2d Ed.1998) § 4.29a, p. 587 ('[c]ourts have often found exculpatory clauses couched in general language insufficient to bar claims for liability for negligence'); but see 1 E. Farnsworth, supra, § 4.29a, at pp. 587-88 ('not all courts have been so demanding'). Hyson v. White Water Mountain Resorts of Connecticut, Inc., supra, 265 Conn. at 642. Connecticut, specifically, requires that 'a party cannot be released from liability for injuries resulting from its future negligence in the absence of language that expressly so provides ... A requirement of express language releasing the defendant from liability for its negligence prevents individuals from inadvertently relinquishing valuable legal rights.' Id., at 643." Nanengast v. Hatch, Superior Court, judicial district of Ansonia-Milford, Docket No. CV040085957S (Dec. 12, 2005, Hartmere, J.) (2005 WL 3624582, *3).

Moreover, "[subsequent] Connecticut caselaw confirms that the Hyson rule is to be strictly applied when determining whether or not exculpatory/indemnity clauses release a defendant from liability in negligence claims." (Citations omitted.) Colagiovanni v. New Haven Acquisition Corp., Superior Court, judicial district of New Haven at New Haven, Docket No. CV0308041 (Nov. 15, 2006, Robinson, J.) (42 Conn. L. Rptr. 423) (2006 WL 3491737, *4); accord Lavin v. Absolute Tank Removal, LLC, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV044003218 (Jan. 29, 2007, Owens, J.T.R.) (42 Conn. L. Rptr. 751) (2007 WL 448030).

In this case, the exculpatory language relied upon by Self Storage does not expressly provide that it is being released from liability for its own future negligence. As a result, its reliance upon the exculpatory clause as a defense to the plaintiff's claim in negligence is unavailing. Colagiovanni v. New Haven Acquisition Corp., supra, 2006 WL 3491737, *4 ("[Explicit] reference to negligence is required to render valid an agreement releasing a party from liability for [its] own negligence."); Nanengast v. Hatch, supra, 2005 WL 3624582, *3) (denying summary judgment and holding that release is insufficient because "[the] release in the present case . . . does not specifically state that the plaintiff is releasing the defendant[] from liability for their own negligence.")

For the foregoing reasons, Self Storage's reliance on the court's decision in Berlin v. Public Storage, Inc., Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV075007494 (Aug. 5, 2011, Tyma, J.) (52 Conn. L. Rptr. 474) (2011 WL 3928582), is misplaced. In Berlin, the exculpatory clause at

issue provided that the defendant would not be responsible for any damage to property from any cause, "including without limitation the defendant's active or passive acts, omissions, NEGLIGENCE or conversion . . . ." (Emphasis supplied by capitalization). Id., 2011 WL 392582, *3. Thus, Berlin involved contractual language that expressly released the defendant from its own negligence; as a result, it is readily distinguishable from this case.

For the foregoing reasons, the motion for summary judgment is DENIED.

Judicial Notice (JDNO) was sent regarding this order.

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Judge: W GLEN PIERSON

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