

NO. A05-1578

State of Minnesota
In Court of Appeals

Craig Johanns and Mary Johanns,

Respondents,

v.

Minnesota Mobile Storage, Inc.,

Appellant.

APPELLANT'S BRIEF AND APPENDIX

RUSSELL & THORP
Alex W. Russell (#0300895)
464 Hamline Avenue South
St. Paul, Minnesota 55105
(651) 699-5038

Attorneys for Respondents

LIND, JENSEN, SULLIVAN &
PETERSON, P.A.
Brian A. Wood (#141690)
William L. Davidson (#201777)
Sarah Morris (#218662)
150 South Fifth Street, Suite 1700
Minneapolis, Minnesota 55402
(612) 333-3637

Attorneys for Appellant

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STATEMENT OF ISSUES

Whether the district court erred in not enforcing the unambiguous damage limitation in the rental agreement the parties signed.

The trial court held that the damages limitation violated Minn. Stat. § 514.978's prohibition on waiver or modification of the Minnesota Liens on Personal Property in Self-Service Storage Act, Minn. Stats. §§ 514.970-514.979. The Act does not expressly address agreements limiting damages. It states that "a rental agreement may not exempt an owner from liability for damages to an occupant's personal property caused by the owner's negligence." Section 514.975.

Apposite cases:

Morgan Co. v. Minn. Mining and Mfg. Co., 310 Minn. 305, 246 N.W.2d 443 (1976)

Indep. Consol. Sch. Dist. No. 24 v. Carlstrom, 277 Minn. 117, 151 N.W.2d 787 (1967)

Dean Van Horn Consulting Assoc. v. Wold, 367 N.W.2d 556 (Minn. Ct. App. 1985)

STATEMENT OF THE CASE

Respondents Craig Johanns and Mary Johanns sued Minnesota Mobile Storage, Inc. (MMS) on a variety of legal theories after MMS enforced its lien on their property for past due rental charges. (A.A.1) The Honorable William E. Macklin, First Judicial District, granted MMS's summary judgment motion on all of the Johannses' claims except their breach of contract and bailment claims. (A.A.28) The parties tried these claims from April 12-14, 2005. The jury decided the issue of damages and awarded the Johannses \$67,750. (A.A.36) On June 21, 2005, the court decided that MMS violated Minn. Stat. § 514.973 in enforcing its lien. The court also ruled that the provision in the parties' rental agreement limiting damages to \$5,000.00 was unlawful under Minn. Stat. § 514.978. (A.A.38-39)

STATEMENT OF FACTS

In late October of 2001, Plaintiff Craig Johanns called Minnesota Mobile Storage, Inc.'s (MMS) franchisor, PODS, Inc., to request delivery of a mobile storage unit. (T.6-7)¹ The Johannses were moving to an apartment while their new home was being built and sought to store some of their possessions. (T.5) Unbeknownst to MMS, the Johannses stored a number of items of sentimental value in the unit, including baby and wedding photos and family antiques. (T.184-88) MMS delivered the storage unit to the Johannses' home in early November 2001. (T.19) Mary Johanns, on behalf of both herself and her husband Craig, executed a rental agreement with MMS for lease of the

¹ "T" refers to the first volume of the trial transcript (April 12-13, 2005). "T-II" refers to the second volume of the transcript (April 14, 2005).

unit. (T.150-51) She agreed to and initialed the following relevant provisions:

4. USE OF UNIT AND COMPLIANCE WITH LAW.

Because the value of the property may be difficult or impossible to ascertain, **Tenant agrees that if the aggregate value of all personal property stored in the Unit exceeds or is deemed to exceed \$5,000, Tenant must show proof of insurance for stored property. Tenant understands and agrees that Lessor need not be concerned with the kind, quantity or value of personal property or other goods stored by Tenant in the Unit pursuant to this Rental Agreement.** Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, or other inherently dangerous material, nor perform any work in the Unit.

* * *

Tenant acknowledges and agrees that the Unit and the Project are not suitable for the storage of heirlooms, precious, invaluable or irreplaceable property such as books, records, writings, works of art, objects for which no immediate resale market exists, objects which are claimed to have special or emotional value to Tenant and records or receipts relating to the stored goods. Tenant acknowledges that the Unit may be used for storage only, and that the use of the Unit for the conduct of business or for human or animal habitation is specifically prohibited. . . .

* * *

6. LIMITATION OF LESSOR'S LIABILITY; INDEMNITY.

Lessor and Lessor's Agents will have no responsibility to Tenant or to any other person for any loss, liability, claim, expense, damage to property or injury to persons ("Loss") from any cause, including, without limitation, Lessor and Lessor's Agents active or passive acts, omissions, negligence or conversion, unless the Loss is directly caused by Lessor's fraud, willful injury or willful violation of law. Tenant shall indemnify and hold Lessor and Lessor's Agents harmless from any loss incurred by Lessor or Lessor's Agents in any way arising out of Tenant's use of the unit or Project. **Tenant agrees that Lessor's and Lessor's Agents total responsibility for any Loss from any cause whatsoever will not exceed a total of \$5,000.** By placing initials here * ², Tenant acknowledges that he

² Which Ms. Johanss did initial. (A.A.40; T.150-51)

understands and agrees to the provisions of this paragraph. Regardless of anything stated in this Section to the contrary and as required by Minnesota Statutes Section 514.976, Lessor is not exempt from liability for damage to Tenant's personal property caused by Lessor's negligence.

(A.A.40) (original emphasis). Thus, the Johannes agreed that MMS's exposure for damages would not exceed \$5,000.

In leasing the PODS unit, the Johannes also agreed to pay rent, and agreed and acknowledged that MMS would have certain lien rights. Specifically, they agreed:

14. LESSOR'S LIEN.

TENANT UNDERSTANDS THAT IF TENANT FAILS TO PAY RENT AS REQUIRED BY THIS AGREEMENT THAT LESSOR MAY HAVE CERTAIN LIEN RIGHTS, INCLUDING, WITHOUT LIMITATION, THOSE PERMITTED BY MINNESOTA STATUTES SECTIONS 514.01 AND 514.973

(A.A.42).

As the Addendum to the Lease ("Addendum"), referred to in Paragraph 2 of the Agreement, noted, the Johanneses' preferred method of payment was by check; they provided no credit card information. (A.A.43; T.258-59, T-II.68) Their next rental payment for the PODS unit was due December 9, 2001. (A.A.43)

The Johanneses failed to make any rental payments after their initial payment for the first month. (A.A.46) Because of this default, the Johannes' property was ultimately sold. Jacquelyn Cosentino-Georges, an in-house attorney for PODS, testified that PODS updated its records to reflect a new address the Johanneses supplied on December 13, 2001; that PODS mailed monthly rental invoices to the Johanneses at the address specified by them; and that PODS attempted to contact the Johanneses on December 21, 2001 and

again on January 25, 2002, but the phone numbers provided by the Johannses were disconnected. (A.A.46, T.229, T.234, A.A.44; A.A.46; T.253, A.A.44)

PODS's computer system automatically generated a notice of default and sale when the Johannses defaulted. (T.257) PODS mailed the notice of default and sale to them by both certified and regular mail. (T.220, 271) Based on PODS' computer log, PODS sent the notice of default and sale no later than February 7, 2001. (T.254; A.A.44) The Postal Service returned as unclaimed the copy of the notice sent by certified mail. (A.A.44) The Johannses denied receiving the notice. On February 6 and 13, 2002, PODS published an advertisement of the sale in the Star Tribune as required by Minn. Stat. § 514.973. (A.A.47) MMS auctioned the property in the unit leased by the Johannses on February 21, 2002. (T.257, 264)

PODS's computer logs showed that on March 12, 2002, Mr. Johanns called PODS to ask if their property had been auctioned. (A.A.44) The log reflects that he told the PODS representative he had been out of the country. (*Id.*) Despite many opportunities, the Johannses never rebutted this statement.

ARGUMENT AND AUTHORITIES

The trial court's ruling that the parties' damages limitation agreement is unenforceable under Minn. Stat. § 514.975 presents a question of law. Accordingly, the Court's review is *de novo*. *Jadwin v. Minneapolis Star and Tribune Co.*, 367 N.W.2d 476, 483 (Minn. 1985) (holding appellate court need not defer to trial court on question of law); *Baumann v. Chaska Building Ctr., Inc.*, 621 N.W.2d 795, 797 (Minn. Ct. App. 2001) (applying *de novo* standard of review to statutory interpretation question).

THE LIMITATION OF DAMAGES PROVISION IS FULLY ENFORCEABLE.

By its plain terms, Minn. Stat. § 514.975 bars only contractual provisions *completely* absolving a party to a rental agreement from liability for its negligence. Because Paragraph 6 of the parties' contract merely limits the total recovery for MMS's negligence, it is valid under Minnesota law. Given that the parties explicitly agreed to limit MMS's responsibility for any loss to no more than \$5,000, this damage cap should be enforced.

A. The Contract Terms Clearly Limit Damages Caused By MMS's Negligence To \$5,000.

Despite the unambiguous agreement of the parties to limit damages, the trial court erroneously refused to enforce the damage limitation. This Court should reverse and enforce the damage limitation because Minnesota appellate courts have routinely approved contract provisions that limit damages for negligence. *See, e.g. Morgan Co. v. Minn. Mining and Mfg. Co.*, 246 N.W.2d 443, 47-48 (Minn. 1976) (holding contractual limitation of damages provision enforceable); *Indep. Consol. Sch. Dist. No. 24 v. Carlstrom*, 277 Minn. 117, 122 151 N.W.2d 784, 787-88 (1967) (noting that parties' reasonable agreement on consequences of contract breach is controlling); *see also Dean Van Horn Consulting Assoc. v. Wold*, 367 N.W.2d 556, 560 (Minn. Ct. App. 1985) (enforcing contract term specifying reasonable liquidated damages for contract breach).

Importantly, the Minnesota Supreme Court even recognizes that exculpatory clauses, which absolve one party to a contract from *all* liability, are valid in light of the strong public policy supporting the freedom of parties to contract as they see fit. *See*

Schlobohm v. Spa Petite, Inc., 326 N.W.2d 920, 923 (Minn. 1982). In assessing the policy considerations of exculpatory clauses, the Supreme Court considers two elements:

1. Whether there was a disparity of bargaining power between the parties (in terms of a compulsion to sign a contract containing an unacceptable provision and the lack of ability to negotiate an elimination of the unacceptable provision), and
2. The types of services being offered or provided (taking into consideration whether it is a public or essential service).

Id. (citations omitted).

In *Schlobohm*, the plaintiff argued that an exculpatory clause in a health club membership contract was an unenforceable adhesion contract and did not preclude her from recovering damages for a severe injury she sustained while exercising at the club. *Id.* at 922, 925. The court held the fact that a contract is printed and presented on a “take it or leave it” basis, does not prove that it is a contract of adhesion. Instead, to invalidate an exculpatory clause on this ground, a plaintiff must show:

that the parties were greatly disparate in bargaining power, that there was no opportunity for negotiation, and that the services could not be obtained elsewhere.

Id. at 924-25. Because the plaintiff agreed to the terms of the membership, did not establish that there was any disparity of bargaining power and failed to show that the services were necessary or not obtainable elsewhere, the court upheld the exculpatory clause. *Id.* at 925-26; accord *Malecha v. St. Croix Valley Skydiving Club, Inc.*, 392 N.W.2d 727, 730 (Minn. Ct. App. 1986) (although contract presented on “take it or leave it basis,” exculpatory clause enforceable because skydiving service available elsewhere).

An exculpatory clause is ambiguous if it is susceptible to more than one reasonable construction. *Fena v. Wickstrom*, 348 N.W.2d 389, 390 (Minn. Ct. App. 1984); see *Denelbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346-47 (Minn. 2003). The Court may not read ambiguity into the plain language of a contract where none exists. *Columbia Heights Motors v Allstate Ins. Co.*, 275 N.W.2d 32, 34 (Minn. 1979) (citation omitted). Whether a contractual provision is ambiguous is a legal question. *Denelbeck*, 666 N.W.2d at 346-47. If the Court determines that a contractual provision is ambiguous, then determining what the ambiguous provision means is a factual question. *Id.* However, if the contract provision is not ambiguous, the language "must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh." *Id.* (quoting *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999)). Phrases found in a contract should be interpreted within the context of the contract as a whole. See *Kauffman Stewart, Inc. v. Weinbrenner Shoe Co.*, 589 N.W.2d 499, 502 (Minn. Ct. App. 1999). There was no evidence of ambiguity presented and the trial court made no finding of any ambiguity.

Despite repeated attacks on the damages limitation contained in Paragraph 6 of the rental agreement, the Johannses presented no evidence whatsoever of any disparity in bargaining power. The damages limitation allowed MMS to offer storage services at a price the market can bear – a clear economic benefit realized through permitting parties the freedom to contract as they see fit. Further, the Johannes offered no evidence establishing that MMS precluded them from negotiating the terms of the rental agreement. There was no testimony even indicating that the Johannses sought to

negotiate terms with MMS. Finally, the Johannses submitted no evidence showing that they could not obtain portable storage service anywhere else at the time they signed the rental agreement. In fact, the Johannses leased another storage unit at a different facility. The evidence showed that Mrs. Johanns specifically initialed Paragraph 6, which contains the \$5,000 damages limitation, as well as the counterpart paragraph providing that if the stored property's value exceeded \$5,000, the Johannses would show proof of insurance. (A.A.40; Rental Agreement, ¶ 4) The Johannses were perfectly free to negotiate a contract provision they disliked, or to seek mobile storage elsewhere. Instead, they chose to accept the damages limitation and store their goods with MMS.

Not only is the damages limitation valid, it is unambiguous and should be enforced. The first part of the paragraph precludes claims by the Tenant unless the loss occurs by the Lessor's fraud, willful injury or willful violation of law. The second part of the paragraph requires the Tenant to hold the Lessor and the Lessor's Agents harmless and to indemnify the agent for any harm arising from the Tenant's use. The third part of the paragraph limits all claims, previously discussed or otherwise, to \$5,000. The limitation dovetails with Paragraph 4, in which Tenant agrees to show proof of insurance if the value of the stored property exceeds \$5,000. The fourth part of the paragraph provides that to the extent Minn. Stat. § 514.975 requires otherwise, the above sections are inapplicable, and explicitly states that "lessor is not exempt from liability for damage to Tenant's personal property caused by Lessor's negligence." This fourth part of the paragraph nullifies the exclusion of negligence liability in the paragraph's first sentence, bringing the rental agreement into compliance with Section 514.975's bar on contractual

negligence exemptions. The language of the damage limitation clause, read as a whole and in the context of the entire contract, clearly indicates the intentions of the parties to limit damages for negligence to \$5,000 and is not susceptible to more than one reasonable interpretation. This damage limitation should be enforced.

B. Minn. Stat. § 514.975 Does Not Bar Agreements To Limit Damages For Negligence.

The trial court refused to enforce the damage limitation clause because it believed that the Legislature precluded any such limitation. The trial court erred in its application of the law; the statute does not prohibit the parties from voluntarily agreeing to cap damages. Minn. Stat. § 514.975 provides that “[a] rental agreement may not exempt an owner from liability for damages to an occupant’s personal property caused by the owner’s negligence.” Time and time again, when the Legislature has sought to preclude contract provisions limiting the extent of liability, it has done so explicitly. For example, when the Legislature amended Minn. Stat. § 300.64 in 1987 to add a provision controlling a corporate director’s liability, it specified “[t]he certificate shall not eliminate or limit the liability of a director” for listed acts and omissions. Section 300.64 (historical and statutory note). Similarly, in 1989, when the Legislature addressed the personal liability of credit union directors in Chapter 52, it specifically stated “[t]he bylaws shall not eliminate *or* limit liability of a director” for specified acts and omissions. *See* Minn. Stat. § 52.09, subd. 5 (emphasis added) (historical and statutory note). Again in 1992, when the Legislature passed the Minnesota Limited Liability Corporation Act, it stated, “[n]either the articles nor a member control agreement may eliminate or limit the

liability of a governor” for a variety of acts or omissions. In addition, when the Legislature passed the Cooperative Associations Act in 2003, it prohibited the “elimination or limitation of liability of a director” in specific circumstances. *See* Minn. Stat. § 332B.663, subd. 4 (historical and statutory note). *See also* Minn. Stats. §§ 67A.17, subd. 3; 302A.251, subd. 4; 308B.465, subd. 2 (each specifically precluding elimination or limitation of liability).

Not only do these statutes show that the Legislature historically treats liability exemptions and liability limitations as distinct, but Minn. Stat. § 645.08(1) states, “[i]n construing the statutes of this state . . . words and phrases are construed according to . . . their common and approved usage” unless it would be contrary to manifest legislative intent. *See Current Technology Concepts, Inc. v. Irie Enterprises, Inc.*, 530 N.W.2d 539, 543 (Minn. 1995); *Gilder v. Auto-Owners Ins. Co.*, 659 N.W.2d 804, 807 (Minn. Ct. App. 2003). *Black’s Law Dictionary* (8th ed. 2004) defines “exempt” as “free or released from a duty or liability to which others are held.” This common understanding of the term is seen in a variety of contexts. *See Frandsen v. County of Chisago*, 573 N.W.2d 684, 685-86 (Minn. 1998) (holding national scenic riverway statutorily exempt from taxation); *State v. Robinson*, 699 N.W.2d 790, 795-97 (Minn. Ct. App. 2005), *rev. granted*, (Minn. Ct. App. Sept. 28, 2005) (holding out-of-court statement qualified for non-hearsay identification exemption).

Where statutory language is clear, it must be applied without construction. *Owens v. Water Gremlin Co.*, 605 N.W.2d 733, 736 (Minn. 2000); *State v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996); *Current Tech. Concepts, Inc.*, 530 N.W.2d at 543;

Occhino v. Grover, 640 N.W.2d 357, 359 (Minn. Ct. App. 2002). Statutory language is unambiguous unless it is reasonably susceptible to more than one meaning. *RSJ, Inc.*, 552 N.W.2d at 701; *Occhino*, 640 N.W.2d at 360; *Westchester Fire Ins. Co. v. Hasbargen*, 632 N.W.2d 754, 756 (Minn. Ct. App. 2001) (citations omitted)

The parties' agreement to limit damages to \$5,000 is consistent with Section 514.975. It does not release or exempt MMS from all liability. It simply limits MMS' potential exposure to the value of the stored property the parties contemplated. By initialing Paragraph 5 of the Rental Agreement, Ms. Johanns specifically agreed that if the value of the property exceeded \$5,000, the Johannses would show proof of insurance for the property. Ms. Johanns consented to Paragraph 6's limitation of liability in the same manner. Knowing that MMS's liability was limited, the Johannses had the option to purchase property insurance covering any claimed value in excess of \$5,000, but chose not to do so.

Had the Legislature intended to bar damage limitations provisions, it would have included the terms "or limit" in the statute. It has demonstrated its ability to do so, as discussed above. Moreover, Minn. Stats. §§ 514.970-979 represent an extremely detailed regulatory scheme governing self-service storage facilities' operation. *E.g.* § 514.979 (facility may not advertise unless licensed and bonded); § 514.972, subd. 4 (specifying language to be used in notice of default); § 514.972, subd. 5 (prohibiting lien from attaching to specified items with less than \$50 in market value). If the Legislature intended to prohibit damage limitations clauses as part of its regulatory scheme, it surely would have done so expressly. Because the limitation of liability provision is consistent

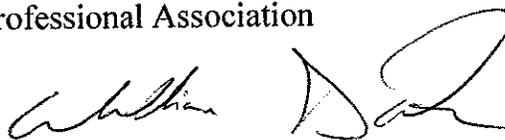
with Section 514.975 and enables businesses like MMS to provide low-cost, temporary storage to the public for household goods, the contractual damages limitation is valid under Section 514.975. The district court erred in refusing to enforce it.

CONCLUSION

The limitation of damages provision in the rental agreement is valid and enforceable. The Legislature has repeatedly shown that when it wishes to prohibit provisions limiting the extent of a party's liability, it does so explicitly. Section 514.975 only bars agreements absolving a party from all liability. Because the rental agreement merely limits MMS's liability to the value of uninsured property the parties agreed MMS would store, it complies with Section 514.975. In addition, because there was no evidence of disparate bargaining power or that MMS's services were not obtainable elsewhere, the limitation of damages provision is enforceable. MMS respectfully requests that the Court reverse the trial court's order and rule that the damages limitation agreement is binding on the Johannses.

Dated: December 7, 2005

Lind, Jensen, Sullivan & Peterson
A Professional Association



Brian A. Wood, I.D. No. 141690
William L. Davidson, I.D. No. 201777
Sarah E. Morris, I.D. No. 218662
Attorneys for Appellant
150 South Fifth Street, Suite 1700
Minneapolis, MN 55402
(612) 333-3637

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).