

840.9038.1

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Our File No.: 840.9038.1

FILED
JUL 11 2016
Bruno Mongiardo, JSC

ABRAHAM KNOLL,	:	SUPERIOR COURT OF NEW ERSEY
	:	LAW DIVISION: PASSAIC
	:	VICINAGE
Plaintiff,	:	
	:	
vs.	:	
	:	DOCKET NO. L-272-16
STARNET INSURANCE COMPANY	:	
	:	Proposed Order
Defendant.	:	

L-372-16

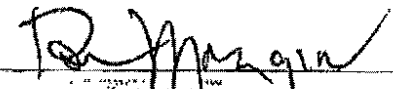
This matter having been opened before this Court by WADE CLARK MULCAHY, attorneys for defendant StarNet Insurance Company for an Order of summary judgment dismissing the complaint with prejudice, together with such other and further relief as this Court deems just and proper, and the Court having reviewed all submitted papers and for good cause shown;

IT IS on this 11 day of July 2016,

ORDERED that:

that Summary Judgment is hereby granted in favor of defendant StarNet Insurance Company, dismissing the plaintiff's complaint with prejudice; and it is further

FURTHER ORDERED that a copy of this Order shall be served on all parties within 7 days hereof.



Bruno Mongiardo, J.S.C.

Opposed
See attached Opinions of the Court

SUPERIOR COURT OF NEW JERSEY

Bruno Mongiardo
JUDGE, CIVIL DIVISION



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NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON
OPINIONS

Abraham Knoll v. Starnet Insurance Company
Docket No. PAS-L-372-16

OPINION OF THE COURT

This matter first comes before the Court on Defendant's Motion for Summary Judgment. The Plaintiff filed an Opposition to the Motion, and Defendant then filed a Reply to the Opposition. The Court considered those submissions and the oral arguments of counsel which took place on June 24, 2016. The Court did advise counsel that it would consider further argument on July 8, 2016. In the interim, Plaintiff did file a Cross Motion for Summary Judgment to which Defendant filed an Opposition. The Court then did consider the additional oral arguments of counsel on July 8, 2016.

The critical facts of this case are not in dispute. Those undisputed material facts are as follows: This case arises out of an insurance dispute over the Plaintiff's claim for lost jewelry valued in excess of \$50,000.00. In his Complaint, Plaintiff alleges that jewelry and silverware were stolen from him on February 3, 2015, the same date he was at the Miami Airport returning home from a family vacation and carrying the bag from which the items were allegedly stolen. On that date, Plaintiff was covered by an insurance policy issued by Defendant. The critical provision of that policy relevant to this case is the Jewelry Amendment-Out of Safe. That amendment provides as follows:

"It is understood and agreed that 'we' will not pay for loss or damage to 'jewelry' and watches with a combined value in excess of \$50,000.00 outside of 'your' safe at any one time unless such items are either:

*Being worn by you or a member of your household, or;
Being carried by hand by you or a member of your household, or;
In the same room as you or an immediately adjacent room, or;
In a locked safe or deposited in bank.*

The alleged jewelry in question was packed in an unlocked bag. Plaintiff was in possession of the bag when he arrived at the airport. In a police report dated February 10, 2015 of the Miami-Dade Police Department, it is reported

that based on security footage, the Plaintiff left his bag behind on the MIC (tram) mover platform at approximately 5:32 pm while boarding the tram. The security footage reveals that the bag was left unattended on the platform until approximately 6:27 pm when it was recovered by an Airport Canine Officer. The bag was then taken to the Miami Intermodal Center Lost and Found. When the bag was opened by the police, there were no valuables inside of it. The Plaintiff does not dispute the findings of the police report.

The security footage for the platform speaks for itself. It depicts the Plaintiff approaching the tram on February 3, 2015 at 5:30:54 pm with the bag in his right hand. It shows the Plaintiff boarding the tram at 5:31:29 pm without the bag. The security footage then depicts the abandoned bag on the tram platform at 6:10:41 pm and 6:12:01 pm. The security footage then depicts the Airport Canine Officer retrieving the abandoned bag at 6:27:14 pm. There is no evidence in the record that anyone forcibly removed the bag from Plaintiff's person.

There is no dispute that Plaintiff carried the bag to the tram platform at approximately 5:31 pm on February 3, 2015, that he left the bag on the tram platform as he boarded the tram at 5:32 pm, that the tram left with the Plaintiff on it, that the bag was recovered from the platform at 6:29 pm, and that the jewelry was not in the bag when it was opened the next day. There is notably nothing on the security footage showing anyone going into the bag and removing its contents.

Plaintiff argues that the policy language contained in the jewelry endorsement is ambiguous and should be construed in favor of the Plaintiff. Plaintiff argues that it is critical that "loss" and "carried by hand" are not defined. However, this Court finds the language is clear and unambiguous and must be enforced as written.

Plaintiff argues that as soon as he became separated from his bag is the point in time when he sustained his loss. Defendant argues that Plaintiff did not sustain a loss until the jewelry was taken from his bag.

Of note, the bag itself never went missing. The fact that the bag containing the jewels was never lost compels the logical conclusion that Plaintiff's leaving the bag on the platform was a separate event from the actual loss of the jewelry. There can be no question that the loss of the jewelry occurred at a point in time when Plaintiff did not have the jewelry in his hand.

Plaintiff argues that the Court should look to the reasonable expectation of the insured when interpreting the policy provision. The very existence of the out-of-safe endorsement is based on the fact there is a greater risk when jewels are not stored in a safe, on the insured's person or in the immediate vicinity of the insured. Storing jewelry in a setting as unsecure as a tram platform when the insured is not present is exactly the kind of heightened risk the policy was designed not to cover. It would be unreasonable to expect coverage under these circumstances. The language of the out-of-safe endorsement is clear and plain.

Courts addressing similar policy provisions have recognized the clarity and validity of these provisions. See for guidance but not as binding precedent Saritejdiam Inc v. Excess Ins. Co. Ltd., 971 F. 2d 910 (2d. Cir. 1992). This is a location-based endorsement which shall be enforced by the Court. To do otherwise, in the absence of any ambiguity, would be to write for the insured a better policy of insurance than the one purchased. This the Court cannot do. Zacarias v. Allstate Ins. Co., 168 NJ 590 (2001).

Accordingly, the Court will grant Defendant's Motion for Summary Judgment and Deny Plaintiff's Cross Motion for Summary Judgment.

Dated:

July 11, 2016



HON. BRUNO MONGIARDO, J.S.C.