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1. Segal v. Am. v. A.M. Express Freight, 1995 U.S. Dist. LEXIS 17248

Client/matter: -None-



Neutral
As of: September 20, 2013 1:14 PM EDT

Sega of Am. v. A.M. Express Freight

United States District Court for the Southern District of New York
November 16, 1995, Dated ; November 17, 1995, FILED
92 Civ. 5838 (JSM), (Action No. 1), 92 Civ. 8382 (JSM), (Action No. 2)

Reporter: 1995 U.S. Dist. LEXIS 17248

SEGA OF AMERICA, INC., Plaintiff - against - A.M. EXPRESS FREIGHT INC., ALL CITY LEASING & WAREHOUSING, INC., Defendants. SEGA OF AMERICA, INC., Plaintiff - against - A.M. EXPRESS FREIGHT, INC., ALL CITY LEASING & WAREHOUSING, INC. and PREMIER WAREHOUSE, Defendants. ALL CITY LEASING & WARHOUSING, INC., Third-Party Plaintiff - against - CONTACT AIR CARGO SERVICES, INC., Third-Party Defendant

Englar Jones & Houston, New York, NY.

Judges: JOHN S. MARTIN, JR., U.S.D.J.

Opinion by: JOHN S. MARTIN, JR.

Opinion

MEMORANDUM ORDER

In an Opinion and Order dated September 29, 1995, the Court ordered summary judgment on the issue of liability and gave the parties additional time to make submissions on the calculation of damages. Plaintiff has now advised the Court that it agrees with the Court's initial determination that the measure of damages should be the invoice value of the missing goods. Counsel for defendant All City Leasing has submitted only his affidavit arguing that the invoice value should not be accepted as the appropriate [*2] measure of damages. That affidavit contains no facts of counsel's personal knowledge and no case support for the arguments made.

Core Terms

measure of damages, invoice value, selling price, invoice

Counsel: [*1] For plaintiff in Action No. 1: Laurence E. Curran, Chalos & Brown, New York, NY.

For plaintiff in Action No. 2: *Michael J. Slevin*, Graham, Miller, Neandross, Mullin & Roonan, P.C., New York, NY.

For defendant and third-party plaintiff All City Leasing & Warehousing, Inc.: Robert W. Piken, Piken & Piken, New York, NY.

For defendants A.M. Express Freight, Inc. and Premier Warehousing & Transport, Inc.: Kenneth R. Feit, Tell, Cheser & Breitbart, New York, NY.

For third-party defendant Contact Air Cargo Services, Inc.: Karin A. Schlosser, Bigham

In a case such as this, plaintiff is entitled to recover the price that the goods would have brought in the market in the destination point. [*Tatlow & Pledger v. Hermann Forwarding Company*, 456 F. Supp. 351, 355 \(S.D.N.Y. 1978\)](#). Here, defendant does not contend that the invoice values is higher than the anticipated selling price but argues that the plaintiff should not recover any potential profit. That argument is directly contrary to the teaching of *Tatlow & Pledger*. Thus, it is appropriate to award judgment in the amount of the invoice price which is

less than defendant concedes the selling price would be.

Judgment will therefore be entered for plaintiff in action No. 1 for \$ 51,432.82 and in Action No. 2 for \$ 330,830.19.

SO ORDERED.

Dated: New York, New York

November 16, 1995

JOHN S. MARTIN, JR.

U.S.D.J.