IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE

DAVID GEORGE and
SHERRY GEORGE,

Plaintiffs-Appellees,

Vs.

Davidson Circuit #94C-1857
C.A. No. 01A01-9510-CV-00454

DANIEL MOVING AND STORAGE COMPANY, INC.,

Defendant-Appellant.

FROM THE DAVIDSON COUNTY CIRCUIT COURT

THE HONORABLE WALTER C. KURTZ, JUDGE

Joel H. Moseley, Moseley & Moseley, of Nashville
For Appellant

Clinton W. Watkins of Brentwood
For Appellees

AFFIRMED AND REMANDED

Opinion filed:

W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.

CONCUR:

DAVID R. FARMER, JUDGE

HOLLY KIRBY LILLARD, JUDGE

Defendant, Daniel Moving and Storage Company, Inc., appeals the trial court's order in a non-jury case awarding damages of $4,000.00 to Plaintiffs, David and Sherry George.

On June 28, 1991, David George signed a contract with defendant whereby the defendant

agreed to move the Georges' household goods from Ooltewah, Tennessee to the Nashville area. When the Georges originally contacted the defendant, they did not plan to store their furniture; however, on the day of the move, Mrs. George inquired about storage because the Georges had yet to secure a new residence. In response to Mrs. George's inquiry Judith Robertson, an agent of the defendant, wrote to Mr. and Mrs. George, stating that a sister company of the defendant would be able to store the Georges' furniture. Ms. Robertson attached a "premove survey form" which reflected the charges associated with storage.

The Georges' household goods remained in storage with the defendant until September 24, 1991, at which time a dispute arose as to whether the fee previously paid by the Georges included delivery to Hendersonville, the location of the Georges' new home, from the storage facility in Nashville. In the end, the Georges elected to move their goods without the assistance of defendant. When the Georges arrived at the storage warehouse, they found that their furniture had mistakenly been loaded on one of defendant's moving vans and thus had to be unloaded and then reloaded into the Georges' van. While the reloading process was taking place, the Georges noticed that some of their furniture and household goods were damaged. They completed a "Rider to Inventory" that day, listing damages, and Mrs. George later prepared a second inventory, which listed damages totaling $6,445.00.

Plaintiffs argue that they had two contracts with the defendant, one for moving and a second for storage. According to plaintiffs, the only provisions limiting the defendant's liability are in the moving contract (the bill of lading), and thus did not act to limit damages that occurred during storage. In the alternative, plaintiffs argue that even if there is just one contract, public policy considerations prohibit defendant from limiting its liability for negligence.

Defendant concedes that some of the Georges' goods were damaged; however, defendant argues that there is just one contract, and whether the plaintiffs' goods were damaged during the move or while in storage, its maximum liability is limited to $620.00 under the provisions of the bill of lading, which provides as follows:

> Unless the shipper expressly releases the shipment to a value of 60 cents per pound per article, the carrier's maximum liability for loss and damage shall be either the lump sum value declared by the shipper or an amount equal to $1.25 for each pound of weight in the shipment, whichever is greater.

> The shipment will move subject to the rules and conditions of the carrier's tariff. Shipper hereby releases the entire shipment to a value not exceeding
> $____60 cents per pound per art._____.
>
> Notice: The shipper signing this contract must insert in the space above, in his own handwriting, either his declaration of the actual value of the shipment, or the words "60 cents per pound per article." Otherwise the shipment will be deemed released to a maximum value equal to $1.25 times the weight of the shipment in pounds.
>
> ___/s/ David George_____ _____6/28/91___

Defendant contends that the Georges' awareness of liability coverage options is further illustrated by their election to list certain items on the defendant's "Inventory of Items of Extraordinary Value," under which the shipper agrees to pay up to $100.00 per pound for any damage that occurs to the listed items.

The trial court did not reach the issue of whether the defendant could limit its liability for negligence, finding instead that there were two contracts; one for moving and one for storage, and that the liability limitations of the moving contract did not apply to the storage agreement. Under the presumption regarding bailment contained in T.C.A. § 24-5-111 (1980), the court entered judgment for the plaintiffs in the amount of $4,000.00.

Defendant raises two issues on appeal. The first issue, as stated in defendant's brief, is:

> Did the trial court err when it concluded that there were two (2) separate contracts; one for moving and one for storing the goods?

On June 28, 1991, the day they were scheduled to move, the Georges determined that their household goods would have to be stored and contacted defendant for information in that regard. That day Ms. Robertson, an agent of the defendant, sent the Georges a letter and a premove survey which provided pricing information. The language of Ms. Robertson's letter indicates that the Georges had not yet agreed to use defendant's storage facility. Moreover, the testimony of Phillip E. Daniel, owner of Daniel Moving and Storage, was that the letter "does not say [the household goods are] going to storage." Mr. Daniel testified that the premove survey was attached, not as a premove survey but to quote the charges on storage as "an informational piece of paper that was requested." Nowhere in the record is there any memorialization of a storage contract, much less provisions limiting the liability of the storage

facility.[1] In fact, the defendant's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment states:

> The storage of the plaintiffs' goods at the time this initial contract was executed was not contemplated. It is not memorialized in the initial contract. Further, the portion of this form relating to storage fees remains blank, as do all other unnecessary components of the initial contract. These items were filled in at a later date when the plaintiffs' bill was totaled. The only portion of the fee schedule filled in related to the number of miles that the goods are to be transported.

Furthermore, defendant's response to plaintiffs' Request for Admissions states:

> The defendants deny that the contract as originally envisioned by the parties involved the storage of goods. The original contract envisioned by the parties only involved the movement of the plaintiffs' property from Chattanooga, Tennessee, to Nashville, Tennessee.

Based upon the record before us, the evidence does not preponderate against the trial court's finding that there were two agreements; one for storage and one for moving, and that the liability limitations in the moving contract do not extend to any storage agreement between the parties.[2] Furthermore, we agree with the court that the presumption regarding bailment contained in T.C.A. § 24-5-111 controls:

> **Negligence of bailee.** -- In all actions by a bailor against a bailee for loss or damage to personal property, proof by the bailor that the property was delivered to the bailee in good condition and that it was not returned or redelivered according to the contract, or that it was returned or redelivered in a damaged condition, shall constitute prima facie evidence that the bailee was negligent, provided the loss or damage was not due to the inherent nature of the property bailed.

There is ample evidence in the record that the Georges' furniture was in good condition when it went into storage. The defendant has not presented evidence to overcome this

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[1] Although the storage charges are listed on the bill of lading, these charges were added at a later date.

[2] We do not reach defendant's estoppel arguments, because these arguments presume there was one contract, and we find to the contrary. Furthermore, defendant's merger argument is not well taken. The general rule of merger is that the last agreement concerning the same subject matter that has been signed by all parties supersedes all former agreements. ***Magnolia Group v. Metro Dev. & Housing***, 783 S.W.2d 563, 566 (Tenn. App. 1989). In the instant suit, the parties never signed a storage contract; but even if they had, an agreement to move household goods and a storage agreement contemplated after the fact are not the "same subject matter" for the purpose of merger.

presumption. ***See generally Crook v. Mid-South Transfer & Storage Co., Inc.***, 499 S.W.2d 255 (Tenn. App. 1973).

Defendant's second issue on appeal, as stated in defendant's brief, is:

> The trial court erred when it failed to give effect to the plaintiffs' expressed [sic] agreement to assume the risk of loss on the value of their goods in excess of 60 cents per pound per article?

Defendant contends that the plaintiffs expressly agreed to assume the risk of loss for their goods to the extent the loss exceeded defendant's agreement to pay up to 60 cents per pound per article, and excluding those items listed on the inventory of extraordinary value. It is true that the Georges agreed to limit the carrier's liability *during the move*; however, the Georges did not sign a contract which permitted the storage facility to limit its liability *during the storage period*.

The judgment of the trial court is affirmed, and the case is remanded for such further proceedings as are necessary. Appellees' additional issues are pretermitted. Costs of appeal are taxed to the appellant.

W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.

CONCUR:

DAVID R. FARMER, JUDGE

HOLLY KIRBY LILLARD, JUDGE