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Eastern District Requires Bad Faith Intent In Order To Sanction Spoliators

Lafayette Insurance Company v. CMA Dishmachines,
2005 WL 1038495 (E.D. La. 4/26/05)

After a fire destroyed a business known as Mo's Pizza, the owner made a claim to Lafayette Insurance Company for the loss of the building. Lafayette hired an independent company to perform the loss adjustment and investigate the origin of the fire. With the help of an electrical engineer, Lafayette determined that the fire was most likely caused by the power cord to the dishmachine in the back of the store. Lafayette filed suit against several parties alleging, among other things, that CMA Dishmachines was liable under the Louisiana Products Liability Act as the manufacturer of the dishmachine. The case was removed to the Eastern District of Louisiana. Defendants Chemical Methods Associates, Inc. (incorrectly named CMA Dishmachines, Inc.), Prism Sanitation Management, L.L.C., and National Union Fire Insurance Company moved for summary judgment requesting that the court dismiss the case as a sanction against Lafayette for its alleged spoliation of evidence. The alleged spoliation was the result of Lafayette's demolition of the ruined building and its contents. Judge Vance denied the motion, finding that the defendants had not met their burden of proof of showing Lafayette's bad faith intent to destroy the evidence.

In the Fifth Circuit, if a party intentionally destroys evidence, the trial court may exercise its discretion to impose sanctions on the responsible party. Sanctions may include dismissal of the entire case, but such drastic sanctions should generally be avoided, especially when lesser sanctions would sufficiently level the playing field. There are two elements that must be proven in order for a court to impose sanctions of any sort. First, the party having control over the evidence must have an obligation to preserve it. Second, the court must consider whether the evidence was intentionally destroyed. The party who seeks sanctions must show that the party who allegedly spoiled the evidence acted in bad faith. Because this was a summary judgment motion, the defendants were required to establish that there were no genuine issues of material fact regarding Lafayette's intentional and bad faith destruction of the evidence.

Judge Vance found that the defendants did not meet their summary judgment burden because genuine issues as to Lafayette's intent existed. The record revealed that Lafayette had actually contacted one, though not all, of the defendants, and offered to preserve the dishmachine in its original position for ten days, and off site after that. Further, Lafayette's inspectors and adjustors had taken numerous photographs of the scene, and Lafayette had provided defendants with those photographs. These actions, the court reasoned, raised genuine issues as to Lafayette's intent. Far from evidencing bad faith, the court found that the evidence in the record indicated that Lafayette had acted to preserve key pieces of evidence.

This case makes clear that, in the Eastern District at least, bad faith intent is a necessary element of a spoliation claim. It is not enough for a party to claim that another party destroyed the

evidence through negligence, or even intentionally but innocently. The allegedly spoiling party must have acted in bad faith.

- Emily E. Eagan

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4th Circuit Holds Wall Covering Maker Can't Distribute Fault To Others

Touro Infirmary v. Sizeler Architects,
2004-0634 (La.App. 4 Cir. 3/23/05), ___ So.2d ___

Touro Infirmary, a hospital that owns the Woldenberg Nursing Home and Assisted Living Facility, discovered that parts of the facility leaked when it rained. A subsequent inspection revealed that, because of the leaks, mold and mildew had infested the floors, walls, ceilings, and windows of the facility.

Touro brought suit against Sizeler Architects for breach of contract and negligence and against DesignTex (the manufacturer of the vinyl wall covering used in the buildings) for redhibition and products liability. Redhibition is a Louisiana remedy used to avoid a sale when a product is defective. The remedy, although based on the contract of sale, has been held to apply to product manufacturers. In its defense, DesignTex urged a comparative fault defense arguing that Touro's problems were caused by the actions of third parties and that any recovery against it should be reduced by the percentage of fault attributable to those third parties.

Judge Carolyn Gill-Jefferson of the Civil District Court of Orleans Parish granted partial summary judgment to Touro holding that comparative fault does not apply to redhibition claims and striking DesignTex's defenses that Touro's problems were caused by the actions of third parties. DesignTex appealed.

Louisiana Civil Code article 2323 governs comparative fault and provides that the percentage of fault of all persons involved in a loss shall be determined. This includes the fault of non-parties and persons who are immune from suit. DesignTex used this language to make several arguments as to why comparative fault should be applied to reduce liability in Touro's redhibition claim.

The Fourth Circuit examined past jurisprudence and determined that comparative fault was a tort-based concept, not applicable to breach of contract claims or redhibition, which is based on the contract of sale. Accordingly, the Fourth Circuit affirmed the district court's ruling.

In dissent Judge Murray disagreed with the majority's analysis of the language of article 2323. She argued that the 1996 amendment to article 2323 extended comparative fault to "any action for damages … asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability." Judge Murray argued that this language, along with recent jurisprudence authorizing the use of comparative fault in breach of contract claims, supported the use of a comparative fault defense in redhibition claims.

- Michelle D. Craig

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Economic Loss Doctrine Bars Claims From Purchase & Installation Of Vessel Engine

Boston Old Colony Ins. Co. v. K & S Diesel Services, Inc.,

2005 WL 840483 (E.D. La. 4/8/05)

Plaintiff, the subrogated marine insurer of a vessel owner which suffered an engine failure, sued K& S, the supplier /installer of the failed engine. Finding that the contract which formed the basis of the plainitffs claims was maritime in nature, the district judge ruled that maritime law applied. As the only the engine itself was physically damaged, the trial judge, applying the economic loss doctrine as set forth in *East River Steamship Corp. v. Transamerica Delaval, Inc.,* 476 U.S. 858 (1986), granted in part the defendant's motion for summary judgment, dismissing the plaintiff's negligence, redhibition and product liability claims arising out of the sale and installation of the engine.

In *East River Steamship Corp. v. Transamerica Delaval, Inc.* the Supreme Court held that a purchaser may not maintain a tort claim under admiralty law "when a defective product, purchased in a commercial transaction malfunctions, injuring only the product itself and causing purely economic loss." The Supreme Court reasoned that the loss of the value of a product that physically harms itself, while having attributes of a product liability claim, is in essence a warranty action. In such situations, a buyer must assert a contract or warranty claim to seek recovery. In the course of reaching this conclusion, the Supreme Court reaffirmed that a tort remedy remained available for damage to all "other property."

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