IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN

JOANN DEFRIESE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 2014-583**
	)	
AMERICAN AIRLINES, INC.,	)	
	)	
Defendant.	)	

FILED 8/9/16
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DEBBIE McMILLAN BARRETT

MEMORANDUM AND ORDER

This matter came before the Court on a Motion for Partial Summary Judgment filed by the Defendant, American Airlines, Inc. ("American Airlines"), against the Plaintiff, JoAnn DeFriese ("Ms. DeFriese"). In light of the pleadings filed with the Court and the arguments presented at the hearing, as well as the applicable legal standard, the Court has made the findings of fact and conclusions of law contained herein.

PROCEDURAL HISTORY

On November 10, 2014, upon conclusion of a trial, the General Sessions Court for Williamson County entered a judgment in favor of Ms. DeFriese in the amount of $17,468.63 for American Airlines' failure to timely deliver a perishable product, as agreed upon by the parties. On November 26, 2014, American Airlines filed a Notice of Appeal with the General Sessions Court, thereby removing the case to the Circuit Court for Williamson County, where it now remains, and the Court set the matter for trial on February 11, 2015. No Complaint was filed in this matter. The trial of this case was reset numerous times, and, on March 11, 2016, American Airlines filed a Motion for Partial Summary Judgment.

In American Airlines' Motion for Partial Summary Judgment, American Airlines seeks to have the Court enforce the limitation of liability provision in the Waybill, Number 001-3014-7073, purportedly executed by the parties (the "Waybill"). American Airlines claims that, under the express terms of the Waybill, it is only liable, if at all, for up to $305.63. American Airlines filed a Memorandum of Law and a Statement of Undisputed Material Facts in support of its Motion, as well as the Trial Brief of Ms. DeFriese filed with the General Sessions Court, which contains Ms. DeFriese's allegations against American Airlines. The allegations are, in essence, that American Airlines agreed to ship six boxes containing 250 pounds of caviar, to a third party in New Jersey, the caviar was ruined by American Airlines' failure to ship the caviar in a timely manner, and, as a result, Ms. DeFriese suffered damages in the amount of $17,468.63. On April 22, 2016, Ms. DeFriese filed her Response in opposition to American Airlines' Motion for Partial Summary Judgment, her Memorandum of Law, a response to American Airlines' Statement of Undisputed Material Facts, and an Additional Statement of Facts.

The Court set the hearing for the Motion for May 12, 2016, but the hearing was continued until July 7, 2016.

APPLICABLE LEGAL STANDARD

Tennessee Rule of Civil Procedure 56.04 states that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Tenn. R. Civ. P. 56.04; *see also Rye v. Women's Care Ctr. of Memphis,*

MPLLC, 477 S.W.3d 235, 264-65 (Tenn. 2015). A fact is material when it is among "those facts that must be decided in order to resolve the substantive claim or defense at which the motion is directed." *Byrd v. Hall*, 847 S.W.2d 208, 211 (Tenn. 1993) (citing *Knoxville Traction Co. v. Brown*, 89 S.W. 319, 321 (Tenn. 1905)). A trial court should grant a motion for summary judgment "only when the facts and the reasonable inferences from those facts would permit a reasonable person to reach only one conclusion." *Dick Broad. Co. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 671 (Tenn. 2013) (citations omitted).

For cases filed after July 1, 2011, Tennessee law states as follows:

> In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:
>
> (1) Submits affirmative evidence that negates an essential element of the nonmoving party's claim; or
>
> (2) Demonstrates to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.

Tenn. Code Ann. § 20-16-101 (2016). If, however, the party moving for summary judgment is a plaintiff who bears the burden of proof at trial, the movant "shifts the burden by alleging undisputed facts that show the existence of [the element for which summary judgment is being considered] and entitle the plaintiff to summary judgment as a matter of law." *Hannan*, 270 S.W.3d 1, 9 (Tenn. 2008), *rev'd on other grounds* by *Rye*, 477 S.W.3d 235.

When considering a motion for summary judgment, the court "must take the strongest legitimate view of the evidence in favor of the nonmoving party, allowing all reasonable inferences in that party's favor, and discard all countervailing evidence. *See*

Byrd, 847 S.W.2d at 210-11. If the moving party has shown the evidence required, the burden of production shifts to the nonmoving party, which is then "required to produce evidence of specific facts establishing that genuine issues of material fact exist." *See Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008); *see also* Tenn. R. Civ. P. 56.06. The nonmoving party may not rely on bare allegations made in their pleadings, but must set forth specific disputed facts—supported by the record—which demonstrate that there is a need for a fact finder's decision at trial. *See* Tenn. R. Civ. P. 56.06; *see also Byrd*, 847 S.W.2d at 211. Any evidence set forth to dispute the movant's statement of undisputed facts must be admissible in evidence. *See* Tenn. R. Civ. P. 56.06; *see also City of Memphis v. Tandy J. Gilliland Family, L.L.C.*, 391 S.W.3d 60, 65 (Tenn. Ct. App. 2012). "To permit an opposition to be based on evidence that would not be admissible at trial would undermine the goal of the summary judgment process to prevent unnecessary trials since inadmissible evidence could not be used to support a jury verdict." *Byrd*, 847 S.W.2d at 216. The nonmoving party may satisfy this burden of production by:

> (1) pointing to evidence establishing material factual disputes that were over-looked or ignored by the moving party; (2) rehabilitating the evidence attacked by the moving party; (3) producing additional evidence establishing the existence of a genuine issue for trial; or (4) submitting an affidavit explaining the necessity for further discovery pursuant to Tenn. R. Civ. P., Rule 56.06.

Martin, 271 S.W.3d at 84 (quoting *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998)).

ANALYSIS

A. Findings of Fact

The findings of fact presented herein reflect the evidence established by the parties' respective statements of fact and responses thereto. In light of the applicable legal standard, where evidence is not admissible, the Court will not consider it for the purposes of summary judgment unless the parties do not dispute its truthfulness, because the Court deems these facts to be stipulated. Accordingly, the Court adopts only the following undisputed facts.

I. Undisputed Material Facts

On May 28, 2013, Ms. DeFriese called American Airlines regarding the shipment at issue and received the confirmed booking via electronic mail the same day. (Aff. J. DeFriese, ¶ 1.) Ms. DeFriese and American Airlines entered into a contract to carry a shipment of caviar for Ms. DeFriese from Nashville to Newark, New Jersey, pursuant to the Waybill. (Aff. J. Ensign, Ex. 1.) According to the Waybill, the shipment consisted of six pieces weighing 250 pounds. (*Id.*) The Waybill provides on its face the following:

> It is agreed that the goods described herein are accepted in apparent good order and conditions (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING THE CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.

(*Id.*) On the reverse of the Waybill, the following terms and conditions, among others, are written:

> 7. In consideration of carrier's rate for the transportation of any shipment, which is in part dependent upon the declared value of the shipment, carrier's liability of any kind whatsoever (loss, damage, or delay) shall be limited to an amount not exceeding:
>
> > (a) 50 cents per pound per shipment (but not less than $50.00), unless a higher value is declared on the air waybill at the time of acceptance by the carrier, and the applicable charges pertaining to such higher value have been paid by the shipper, plus the amount of any transportation charges for which carrier has been paid for such part of the shipment lost, damaged or delay . . . .
>
> 8. Shipper may declare a higher value on the entire shipment in which case an additional transportation charge will apply as set forth in [American Airlines'] most recent published rules.
>
> . . .
>
> 17. No agent, employee or representative of Carrier has authority to alter, modify or waive any provisions of this contract.

(*Id.*) The Waybill lists no declared value for the carriage of the shipment. (*Id.*) Ms. DeFriese paid no additional fee that would have been due in connection with the declaration of value for the carriage of the shipment. (*Id.* at ¶ 5, Ex. 1.) Prior to shipment, Ms. DeFriese's son signed the Waybill. (*Id.* at Ex. 1.)

Ms. DeFriese has been shipping commercial cargo by air for many years. (Aff. C. Vlahos, Ex. A, Resp. Inter. No. 3.) Ms. DeFriese has shipped commercial cargo with a number of commercial carriers, including American Airlines, Federal Express, United Parcel Service, Delta Airlines, and the United States Postal Service. (*Id.*) Ms. DeFriese's standard business practice is to declare a value for commercial goods shipped either by telling the shipper's agent the value of the goods or by noting it on the shipper's form. (*Id.* at Resp. Inter. No. 7.) Ms. DeFriese used to "declare[ ] the value on American Airlines' form until approximately late 2011 when Continental Caviar was told

by an American Airlines employee that this was unnecessary." (*Id.* at Resp. Inter. No. 4.) Ms. DeFriese continued to ship with American Airlines through 2013. (*Id.*) Each of the waybill forms Ms. DeFriese executed from 2008 forward contains the same relevant terms and conditions as the Waybill, including the limitation on liability, as well as the box for declared value for carriage and a box for valuation charges. (Aff. J. Ensign, ¶¶ 6-7.) On each occasion Ms. DeFriese declared value for carriage with American Airlines, the box for valuation charges reflected the amount she paid for such declared value in addition to the regular carriage charges. (*Id.* at ¶ 9.)

American Airlines accepted the shipment at issue and carried it from Nashville to Newark. (*Id.* at ¶ 10.) Although the shipment was scheduled to depart Nashville at 6:35 a.m. on May 29, 2013, and arrive in Newark at 4:00 p.m. on May 29, 2013, the shipment arrived in Newark at 7:20 p.m. on May 30, 2013. (*Id.* at ¶ 11.) If the Court were to adopt the terms of the Waybill, American Airlines' maximum liability would be $305.63, which includes 50 cents per pound for a 250 pound shipment and transportation charges of $180.63. (*Id.*)

II. Disputed Material Facts

The Court finds that, although the parties claim certain facts are disputed, the disputes fall into one of two categories: disputes regarding the characterization of factual allegations and disputes regarding truthfulness of facts the opposing party believes are immaterial. The Court finds these disputes are either not genuine disputes of fact or immaterial to the issue at hand, which is whether American Airlines breached its contract with Ms. DeFriese.

B. Conclusions of Law

In support of its Motion for Summary Judgment, American Airlines argues the limitation of liability contained in the Waybill governs the transaction at issue because the Waybill is a contract executed by the parties, which Ms. DeFriese's son, acting as her agent, signed prior to delivery of the caviar to American Airlines, and on which neither party declared a value of the shipment. American Airlines further argues Ms. DeFriese cannot circumvent the terms of the Waybill because there is no dispute that her son was acting as her agent when he signed it, she was familiar with the terms of the Waybill, and the Waybill, by its plain terms, could not be modified by any agent of American Airlines. American Airlines argues Ms. DeFriese declared a value in previous transactions and paid additional carriage fees for the shipment of valuable cargo, and, therefore, she was familiar with the need to do so, no matter what she was told by an American Airlines agent.

In response, Ms. DeFriese argues the Waybill's liability limitation should not govern the transaction because she was not afforded reasonable notice of the provision and she was not given the opportunity to purchase insurance to cover the value of the shipment. Ms. DeFriese argues the liability American Airlines claims should be void because it falls so far short of the value of the goods shipped, and she argues that upholding the limitation of liability provision in the Waybill would violate public policy because American Airlines failed to inquire about the value of the shipment and instructed her that insurance was unnecessary.

Federal common law governs a carrier's liability for the loss of goods during interstate shipment. *Nippon Fire & Marine Ins. Co. v. Skyway Freight Sys., Inc.*, 235

F.3d 53, 59 (2d Cir. 2000). Generally, limitations of liability are enforceable in claims sounding in tort and in contract. *United States Gold Corp. v. Fed. Express Corp.*, 719 F. Supp. 1217, 1225 (S.D.N.Y. 1989). If the carrier appropriated property for its own use, limitations of liability may not be enforceable. *See, e.g., Glickfeld v. Howard Van Lines, Inc.*, 213 F.2d 723, 727 (9th Cir. 1954). A limitation of liability is enforceable if it "was the result of a fair, open, just, and reasonable agreement between carrier and shipper, entered into by the shipper for the purpose of obtaining the lower of two or more rates of charges proportioned to the amount of the risk," and if "the shipper was given the option of higher recovery upon paying a higher rate." *United States Gold Corp.*, 719 F.Supp. at 1224 (internal citations omitted). A carrier must give reasonable notice, which is a question of law to be determined by the court. *Id.* at 1225. As a result of lawsuits similar to the one before the Court, other courts have upheld the same limitation of liability provision contained in the Waybill. *See, e.g., Hill Constr. Corp. v. Am. Airlines, Inc.*, 996 F.2d 1315, 1317-18 (1st Cir. 1993); *Deiro v. Am. Airlines, Inc.*, 816 F.2d 1360, 1366 (9th Cir. 1987) (holding that even gross negligence is covered by a valid limitation of liability). Courts have upheld similar limitation of liability language when it limited liability to fifty cents per pound for all of the plaintiff's claims. *Reece v. Delta Air Lines, Inc.*, 731 F.Supp. 1131, 1135 (D. Maine 1990).

Important to the Court's consideration of this Motion is the case of *Ing v. Am. Airlines, Inc.*, No. C 06-02873 WHA, 2007 WL 420249 (N.D. Cal. Feb. 5, 2007). In *Ing*, the United States District Court for the Northern District of California determined that a limitation of liability on the face of a waybill, subject to provisions printed on the reverse side of the waybill, including those limiting carrier's liability and providing a space for the

declaration of value and a space for the valuation fee, provided reasonable notice to the shipper as a matter of law. *Id.* at *5 (citing *Hill Constr. Corp.*, 996 F.2nd 1315). In *Ing*, the Court rejected the argument that the quickness of the transaction, as well as the failure of American Airlines to advise the shipper of the need to declare a value, prevented the shipper from having reasonable notice of the limitation of liability, thereby defeating the limitation of liability. *Id.* at *6. The *Ing* Court is not the only court to have determined that a statement of an employee of American Airlines cannot serve as an oral modification of the contract when the contract contains a prohibition against oral modifications. *See Benjamin v. Am. Airlines, Inc.*, No. CV 213-150, 2015 WL 8968297 (S.D. Ga. Dec. 15, 2015); *Lavine v. Am. Airlines, Inc.*, No. 2917 SEPT. TERM 2009, 2011 WL 6003609 (Md. Ct. Spec. App. Dec. 1, 2011).

Additionally, a party to a contract cannot avoid obligations under that contract simply because the party has not read the contract. *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 274 (Tenn. 2011).

In sum, there is a litany of case law concerning the same or similar limitation of liability language present in the instant case, and although there is no case directly on point from a Tennessee federal court, the Court finds the authority set forth herein to be very persuasive precedent. In light of the foregoing legal principles, the Court finds American Airlines gave Ms. DeFriese reasonable notice of the limitation of liability provision, because it was printed, in part, on the front of the Waybill—the contract governing the behavior of the parties—in conspicuous type. The Waybill provided the opportunity for Ms. DeFriese to declare a value and elect for additional coverage of her cargo, but Ms. DeFriese did not make such a declaration or election. The Waybill

expressly prohibits oral modification by an agent or employee of American Airlines, and, therefore, it is immaterial what Ms. DeFriese was told about the Waybill by an American Airlines employee. The Court finds Ms. DeFriese had many years' worth of experience with American Airlines' waybills and the liability limitations therein. Ms. DeFriese had declared values in the past and paid additional fees for the shipment of high-value cargo. Therefore, Ms. DeFriese cannot be said to be ignorant of the method by which American Airlines contracts for the shipment of cargo. It is undisputed that Ms. DeFriese's son, acting on her behalf and as her agent, delivered the cargo and signed the Waybill, thereby accepting its provisions on her behalf. It matters not whether he read the Waybill before he signed it, nor whether an employee of American Airlines prepared the Waybill. The Court finds Ms. DeFriese had an obligation to review the Waybill and decide whether to sign it before delivering her cargo.

Although the Court acknowledges it is regrettable that Ms. DeFriese received erroneous advice from at least one American Airlines employee, Ms. DeFriese has not pleaded detrimental reliance, fraud, or any other cause of action that could enable the Court to look outside of the terms of the Waybill. The Court cannot simply overlook the undisputed facts of the case and the extensive case law concerning the same or similar language present in the Waybill.

Accordingly, the Court finds the Waybill limited American Airlines' liability to 50 cents per pound of cargo, as well as a carriage fee of $180.63, resulting in a total amount of liability, to which American Airlines is subject, of $305.63.

CONCLUSION

Upon review of the pleadings filed before the Court, as well as the applicable legal standard and the parties' arguments at the hearing of the instant motion, the Court finds American Airlines' Motion for Partial Summary Judgment is well taken and is hereby **GRANTED**. American Airlines' liability, if any, will be limited to the amount of $305.63, as stated in the Waybill.

IT IS SO ORDERED.

ENTERED this 9th day of August, 2016.

DEANNA B. JOHNSON
CIRCUIT COURT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Memorandum and Order was mailed, postage prepaid, and/or emailed, and/or faxed, to:

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This the 10th day of August, 2016.

Anne Riley PC
CLERK