

# COURT OF APPEAL FOR ONTARIO

CITATION: Suhaag Jewellers Ltd. v. Alarm Factory Inc. (AFC Advance  
Integration), 2016 ONCA 33

DATE: 20160113  
DOCKET: C60662

Juriansz, Hourigan and Brown JJ.A.

BETWEEN

Suhaag Jewellers Ltd.

Plaintiff (Appellant)

and

The Alarm Factory Inc. carrying on business as AFC Advance Integration

Defendant (Respondent)

Marek Z. Tufman and Eleonora Izmaylov, for the appellant

Christopher R. Dunn and Jordan M. Black, for the respondent

Heard and released orally: January 8, 2016

On appeal from the judgment of Justice James F. Diamond of the Superior Court of Justice, dated June 4, 2015.

## ENDORSEMENT

[1] The appellant seeks to set aside summary judgment dismissing its action against the respondent seeking damages arising out of a theft from the appellant's jewelry business. The respondent had supplied security and alarm monitoring services to the appellant. In the action, the appellant claims the system failed when it was robbed.

[2] The motion judge granted summary judgment because the contract included an exculpatory clause that noted the possibility the system might fail, recommended that the customer obtain a separate insurance policy to cover property loss and provided that the respondent would not be liable in any way for any loss arising from the provision of the products and services, no matter how caused.

[3] The exculpatory clause is part of a commercial contract between two corporate entities. The motion judge properly granted summary judgment even though there were conflicting versions of the negotiation of the contract. If the appellant's version were accepted entirely, there would still be no genuine issue requiring a trial. On the appellant's evidence, it is not arguable that the appellant was induced to enter the contract by a misrepresentation. On the appellant's evidence, the only material representation was that the contract was a standard agreement and the appellant executed the contract.

[4] The motion judge's decision is entirely consistent with this court's decision in *Fraser Jewellers (1982) Ltd. v. Dominion Electric Protection Co.*, [1997] O.J. No. 2359. At para. 32 of that case, the court said:

The trial judge held that it was the defendant's responsibility to bring the clause to the "specific attention" of the plaintiff and to explain its effect. Not to have done so, he found, constituted an "unacceptable commercial practice". As I view the matter, there was no special relationship existing between these parties that

imposed any such obligation on the defendant. This is an ordinary commercial contract between business people....[I]n this commercial setting, in the absence of fraud or other improper conduct inducing the plaintiff to enter the contract, the onus must rest upon the plaintiff to review the document and satisfy itself of its advantages and disadvantages before signing it. There is no justification for shifting the plaintiff's responsibility to act with elementary prudence onto the defendant.

[5] The estoppel argument fails for the same reason, that there was no misrepresentation on the evidence.

[6] The appeal is dismissed. Costs are fixed in the amount of \$15,000, all inclusive as agreed by counsel.

“R.G. Juriansz J.A.”

“C.W. Hourigan J.A.”

“David Brown J.A.”