STATE OF MICHIGAN

COURT OF APPEALS

MERIDIAN MUTUAL INSURANCE COMPANY and ESTATE DESIGN & FORMS, INC.,

Plaintiffs-Appellees,

v

MASON-DIXON LINES, INC.,

Defendant-Appellant.

UNPUBLISHED
February 2, 1999

No. 199797
Macomb Circuit Court
LC No. 96-004394 AV

Before: Gage, P.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order affirming the district court's final judgment in favor of plaintiffs. We reverse and remand.

This case arises from defendant's transportation from Texas to Michigan of a printing press purchased by plaintiff Estate Design & Forms, Inc. (Estate Design). Estate Design purchased insurance from plaintiff Meridian Mutual Insurance Company (Meridian Mutual) to cover any damage the press might suffer in transit. On its arrival in Michigan, the press was damaged. Plaintiffs sued defendant in circuit court, alleging common law theories of negligence and bailment. After a mediation evaluation of $5,000 in plaintiffs' favor was rejected, the case proceeded in district court. Despite several motions by defendant for summary disposition and dismissal, which both the district court and the circuit court on appeal denied, the jury found for plaintiffs, who received an award of $85,835.88. The circuit court subsequently affirmed this judgment.

Defendant first argues that the district court lacked subject-matter jurisdiction over the instant case because plaintiffs' negligence and bailment claims are preempted by the federal Interstate Transportation Act, 49 USC 10101 *et seq*. Although the lower courts neglected to address this issue, we may review it because it is one of law and all the necessary facts are before us. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). Moreover, the issue of federal preemption is a challenge to subject-matter jurisdiction that may be raised at any time. *American Federation of State, County & Municipal Employees v Dep't of Mental Health*, 215 Mich App 1, 4; 545 NW2d 363 (1996).

Thus, although defendant moved for a preemption-based dismissal outside the time frame for motion filing scheduled by the district court, the court erred in denying defendant's motion on the basis that it was untimely filed. Whether a court has subject-matter jurisdiction is a question of law, which we review de novo. *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997).

The Supremacy Clause of the United States Constitution establishes that federal law is the supreme law of the land. US Const, art VI, cl 2. Federal preemption of state law is either express or implied. *Ryan v Brunswick Corp*, 454 Mich 20, 28; 557 NW2d 541 (1997). If express, the intent of Congress to preempt state law must be clearly stated in the statute's language or impliedly contained in the statute's structure and purpose. *Id*. In the absence of express preemption, one form of implied preemption is field preemption, which occurs when federal law so thoroughly occupies a legislative field that it is reasonable to infer that Congress did not intend for states to supplement it. *Id*.

The Interstate Commerce Act, as its name implies, regulates interstate transportation by common carriers. Section 11707 of the Act, commonly referred to as the Carmack Amendment, addresses a carrier's liability for goods lost or damaged during interstate transport.[1] The amendment provides as follows:

> A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or IV of chapter 105 of this title and a freight forwarder shall issue a receipt or bill of lading for property it receives for transportation under this subtitle. That carrier or freight forwarder and any other common carrier that delivers the property and is providing transportation or service . . . are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier, or (3) another carrier over whose line or route the property is transported . . . . [49 USC 11707(a)(1).]

In analyzing the scope of the Carmack Amendment, the Supreme Court long ago recognized that "[a]lmost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject, and supersede all state regulation with reference to it." *Adams Express Co v Croninger*, 226 US 491, 505-506; 33 S Ct 148; 57 L Ed 314 (1913). "With the enactment in 1906 of the Carmack Amendment, Congress superseded diverse state laws with a nationally uniform policy governing interstate carriers' liability for property loss." *New York, New Haven & Hartford R Co v Nothnagle*, 346 US 128, 131; 73 S Ct 986; 97 L Ed 1500 (1953). See also *Atchison, Topeka & Santa Fe R Co v Harold*, 241 US 371, 378; 36 S Ct 665, 668; 60 L Ed 1050 (1916).

Assuming the applicability of the Carmack Amendment, § 1107 would thus constitute plaintiffs' sole remedy. The parties do not dispute that defendant qualifies as "[a] common carrier providing transportation for services subject to the jurisdiction of the Interstate Commerce Commission," nor that it issued a bill of lading covering Estate Design's press that it received for transportation. 49 USC 11707(a)(1). Furthermore, plaintiffs seek only compensation for the "actual loss or injury to the [press]," 49 USC 11707(a)(1), that defendant allegedly caused in transporting it. Therefore, because

Congress has occupied the legislative field regarding interstate common carrier liability, plaintiffs' common law negligence and bailment claims are preempted. See *Southeastern Express Co v Pastime Amusement Co*, 299 US 28; 57 S Ct 73; 81 L Ed 20 (1936); *WD Lawson & Co v Penn Central Co*, 456 F2d 419, 421 (CA 6, 1972).[2] Plaintiffs' argument that the trial court committed harmless error in applying common law negligence principles is without merit.

Although we conclude that federal law applies to the instant dispute, we reject defendant's contention that the district court lacked subject-matter jurisdiction over this case. Pursuant to 28 USC 1337(a), federal district courts possess jurisdiction over Carmack Amendment claims "only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs." Otherwise, state courts have jurisdiction to adjudicate Carmack Amendment claims that do not fall within federal court jurisdiction under 49 USC 11707(d)(1).[3] The instant case was remanded to the district court after mediators evaluated plaintiffs' claims at less than $10,000. Neither plaintiffs nor defendant challenge the determination that the amount in controversy is less than $10,000. Therefore, because there is no single bill of lading in this case involving an amount in controversy exceeding the $10,000.00 requirement, federal jurisdiction is lacking, and the district court has jurisdiction to adjudicate plaintiffs' cause of action.

Next, defendant argues that the district court erred in denying its motion for summary disposition based on a release executed between plaintiffs. We review a summary disposition determination de novo as a question of law. *Lindsey v Harper Hospital*, 213 Mich App 422, 425; 540 NW2d 477 (1995), aff'd 455 Mich 56; 564 NW2d 861 (1997). When a motion is premised on MCR 2.116(C)(7), the court must consider not only the pleadings, but also any affidavits, depositions, admissions or documentary evidence that has been filed or submitted by the parties. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998).

A release is a contract, and the construction of unambiguous contract language is a question for the court. *Automobile Club Ins Ass'n v Page*, 162 Mich App 664, 667; 413 NW2d 472 (1987). A release covers only claims intended to be released. *Auto-Owners Ins Co v Higby*, 57 Mich App 604, 606; 226 NW2d 580 (1975). The scope of a release is governed by the intent of the parties as it is expressed in the release. *Wyrembelski v City of St. Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996). If the text in the release is unambiguous, the parties' intentions must be ascertained from the plain, ordinary meaning of the language of the release. *Id*. A contract is ambiguous only if its language is *reasonably* susceptible to more than one interpretation. *Id*. This Court will look beyond the language of the release to determine the fairness of the release and the intent of the parties on executing it. *Rodriguez v Solar of Michigan, Inc*, 191 Mich App 483, 496; 478 NW2d 914 (1991).

Defendant maintains that the language in the release that plaintiffs executed unambiguously extended the release granted by Estate Design to any and all other potentially liable parties, including defendant. However, our review of the release and the documentary evidence submitted leads us to conclude that defendant was not entitled to summary disposition. The trial court correctly found that no reasonable person could conclude that the release executed between Estate Design and its insurer Meridian Mutual was intended to release defendant, the tortfeasor, who was not in privity with the

parties. Thus, the trial court did not abuse its discretion in precluding evidence of the release because it was irrelevant to the facts of this case. MRE 401 and 402; *Phinney*, *supra* at 528.

Finally, we reject defendant's argument that it was entitled to a directed verdict because Estate Design failed to comply with the requirement provided in the bill of lading that it timely file a written claim. This Court reviews de novo the trial court's decision on a motion for a directed verdict. *Berryman v Kmart Corp*, 193 Mich App 88, 91; 483 NW2d 642 (1992). We consider the evidence presented at trial in the light most favorable to the nonmoving party to determine whether a prima facie case was established. *Id.* A directed verdict should be granted only if reasonable jurors could not reach different conclusions. *Id*. We do not believe that no reasonable juror could have concluded that plaintiffs substantially notified defendant of their claim. Moreover, we have concluded that federal law governs the instant dispute. If the case had been adjudicated under the applicable federal law, we believe a question of fact existed as to whether plaintiff Estate filed a claim that satisfies the minimum filing requirements under 49 USC 11707(e).[4]

Reversed and remanded for a new trial under the applicable federal law. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Michael J. Kelly

[1] Subsequent to the filing of the instant case, the Carmack Amendment was recodified and amended without substantive change. Section 11707 was reenacted at 49 USC 11706 (Liability of rail carriers under receipts and bills of lading), 49 USC 14706 (Liability of carriers under receipts and bills of lading) and 49 USC 15906 (Liability of pipeline carriers under receipts and bills of lading).

[2] Other federal circuits have likewise held that the Carmack Amendment preempts all state and common law remedies that might be asserted against a carrier for damages to goods shipped under a bill of lading. See e.g., *Rini v United Van Lines, Inc*, 104 F3d 502, 504-507 (CA 1, 1997); *Cleveland v Beltman North American Co, Inc*, 30 F3d 373, 378 (CA 2, 1994); *Hughes Aircraft Co v North American Van Lines, Inc*, 970 F2d 609, 613 (CA 9, 1992); *Underwriters at Lloyds of London v North American Van Lines*, 890 F2d 1112, 1120-1121 (CA 10, 1989); *Intech, Inc v Consolidated Freightways, Inc*, 836 F2d 672, 677 (CA 1, 1987); *Hughes v United Van Lines, Inc*, 829 F2d 1407, 1415 (CA 7, 1987); *Hopper Furs, Inc v Emery Air Freight Corp*, 749 F2d 1261, 1264 (CA 8, 1984).

[3] The current, recodified version of this provision is found at 49 USC 14706(d)(1).

[4] There are many federal cases addressing the issue of whether the minimum filing requirements were met under different factual settings, as well as whether the carrier is estopped from relying on the claim filing requirement based on his actions toward the shipper. See e.g., *Insurance Co of North America v GI Trucking Co*, 1 F3d 903, 906-907 (CA 9, 1993); *Salzstein v Bekins Van Lines, Inc*, 993 F2d 1187, 1191 (CA 5, 1993); *Culver v Boat Transit, Inc*, 782 F2d 1467, 1469 (CA 9, 1986); *Taisho*

Marine & Fire Ins Co, Ltd v Vessel "Gladiolus", 762 F2d 1364, 1368 (CA 9, 1985); *Wisconsin Packing Co, Inc v Indiana Refrigerator Lines, Inc*, 618 F2d 441, 444-448 (CA 7, 1980).