STATE OF MICHIGAN

COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,
LEON H. HUFFMAN and BONNIE S. HUFFMAN

Plaintiff-Appellants,

v

WHITE CONSOLIDATED INDUSTRIES, d/b/a/
FRIGIDAIRE and GIBSON,

Defendant-Appellee.

UNPUBLISHED
November 22, 1996

No. 184750
LC No. 92-50184-CZ

Before: Saad, P.J., and Holbrook and G.S. Buth,* JJ.

PER CURIAM.

In this dispute over incidental and consequential damages, plaintiffs appeal the circuit court's grant of summary disposition in favor of defendant. We affirm.

On July 7, 1989, the refrigerator in plaintiffs' café caught fire and as a result the entire café was destroyed. Plaintiffs sued the manufacturers of the refrigerator on the grounds that it was defective. Plaintiffs purchased the refrigerator in April, 1987, which came with the following disclaimer, written in capital letters:

> IN NO EVENT SHALL GIBSON BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, FOOD LOSS. GIBSON IS NOT RESPONSIBLE FOR SERVICE CALLS WHICH DO NOT INVOLVE DEFECTIVE WORKMANSHIP OR MATERIALS COVERED BY THIS WARRANTY OR FOR DAMAGES CAUSED BY SERVICE PERFORMED BY PERSONS OTHER THAN GIBSON AUTHORIZED SERVICE COMPANIES, OR BY USE OF PARTS OBTAINED FROM PERSONS OTHER THAN SUCH COMPANIES, OR BY OTHER EXTERNAL CAUSES SUCH AS ABUSE, MISUSE, INADEQUATE POWER SUPPLY, OR ACTS OF GOD. (Emphasis added.)

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* Circuit judge, sitting on the Court of Appeals by assignment.

Based upon this disclaimer, defendant moved for summary disposition, and the circuit court granted judgment in defendant's favor.

Plaintiffs contend on appeal that the trial court erred in dismissing their claim. They raise two principal arguments, and in light of the record and the excellent opinion of the circuit court, both arguments may be summarily rejected.

I

Plaintiffs' contention that the disclaimer should be construed under the "ejusdem generis" rule of construction was not raised below, and hence is unpreserved. *Gordin v William Beaumont Hosp,* 180 Mich App 488, 494; 447 NW2d 793 (1989). However, were we to consider the issue, we would not apply it here.

Under the "ejusdem generis" rule plaintiffs argue that, because the disclaimer disclaims liability for "food loss," the disclaimer should be interpreted to include only losses of that character, and not more significant losses, such as occurred here. The only case upon which plaintiffs rely that is remotely similar to this case, is *Quisle v Brezner,* 212 Mich 254; 180 NW 467 (1920). However, we find *Quisle* inapplicable, because here, unlike *Quisle,* the contract specifically stated, "*including, but not limited to, food loss.*" Under the plain meaning of this statement, the disclaimer is not limited to food loss. We decline to find the ejusdem generis rule applicable here.

II

Plaintiffs also argue that, if their damages are excluded by the limitation of damages language in the contract, the exclusion should be void because it is unconscionable. For the reasons well stated by the lower court, we decline to so hold.

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ George S. Buth