

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAWRENCE D. and MADELINE H. : CIVIL ACTION
PERSICK, h/w :
 :
v. :
 :
UNITED STATES POSTAL SERVICE : NO. 00-5062

MEMORANDUM

Dalzell, J.

February 23, 2001

Plaintiffs originally filed suit against the United States Postal Service ("USPS") in the Chester County Court of Common Pleas alleging violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, breach of contract and equitable estoppel arising from USPS's failure to deliver an express mail package containing stock option materials on time. The USPS removed the action to this Court based on the Federal Tort Claims Act, 28 U.S.C. § 2679, because the claim is against an agency of the United States and sounds in negligence.

The parties submitted a joint stipulation of facts, and each side has moved for summary judgment. For the reasons set forth below, we will grant USPS's motion and deny plaintiffs'.

I. Facts

On Thursday, August 27, 1998, at about 9:40 a.m. Mr. Persick went to the Southeastern Regional Mail Facility in Devon, Pennsylvania to mail a letter that he needed delivered by noon the next day, Friday, August 28. A postal worker suggested that Mr. Persick use the USPS's Express Mail service, and, with the help of the postal worker, Mr. Persick completed a USPS Label 11-B (for Express Mail), packaged the documents, and paid the

requisite \$10.75 fee. Mr. Persick received a receipt numbered EE692198453US.

Although Mr. Persick told the postal employee that he needed the package to be delivered by noon the next day, the postal worker never mentioned any limits on liability relative to the Express Mail service. The package was addressed to American Home Products in Madison, New Jersey and contained documentation relative to the exercise of 2,200 stock options in Mrs. Persick's prior employer, American Home Products. American Home Products considers stock options exercised on the date the necessary paperwork is received and considers the exercise price to be the mean share price on the day the documentation is received.

USPS did not deliver the Express Mail package on Friday, August 28, 1998, when American Home Products' stock had a mean share price of \$55.3822, but delivered it on Monday, August 31, 1998, when the company's mean share price was \$52.1751. As the parties have stipulated, because American Home Products did not receive the package on August 28, 1998, the plaintiffs suffered a financial loss of \$7,055.62.

USPS relies on the limitation of liability language printed on the customer receipt portion of USPS Label 11-B,¹ as

¹ The upper right quadrant of the Express Mail label states in upper-case, bold letters "SEE REVERSE SIDE FOR SERVICE GUARANTEE AND INSURANCE COVERAGE LIMITS", Compl. at Ex. B. The front also provides a number to call for tracking information, id. The reverse side provides, in relevant part, that if the package is not delivered before the guaranteed time the next day "and the mailer files a claim for a refund, the USPS will refund the postage", id. at Ex. C. The reverse side also provides that "[n]o coverage is provided for consequential losses due to loss,
(continued...)

well as immunity for the alleged negligent transmission of postal matter under 28 U.S.C. § 2680(b).

II. Legal Analysis²

39 U.S.C. § 409(a) provides, in relevant part, that "the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service. Any action brought in a State court to which the Postal Service is a party may be removed to the appropriate United States district court...". Thus, the district courts have jurisdiction to hear plaintiffs' claims against USPS, see Licata v. United States Postal Service, 33 F.3d 259 (3d Cir. 1994)(holding that plain language of § 409(a) confers

¹(...continued)
damage, or delay of Express Mail", id. Although the USPS refunded the plaintiffs the \$10.75 paid for the Express Mail service, a claims appeal manager stated that the "loss sustained by [plaintiffs] was an indirect loss as a result of the time-sensitive nature of the contents of the article, and is considered consequential in nature; therefore, we cannot honor your clients' claim for indemnity", id. at Ex. A.

² A summary judgment motion should only be granted if we conclude 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," Fed. R. Civ. P. 56(c). In a motion for summary judgment, the moving party bears the burden of proving that no genuine issue of material fact is in dispute, see Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585 n.10 (1986), and all evidence must be viewed in the light most favorable to the nonmoving party, see id. at 587. The mere existence of some evidence in support of the nonmoving party will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Here, the parties have stipulated to all of the material facts.

jurisdiction on district courts, even though it may not establish a cause of action).

Under 39 U.S.C. § 409(c), the Federal Tort Claims Act ("FTCA") applies to the USPS, but specifically immunizes it from "any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter", 28 U.S.C. § 2680(b). Although plaintiffs have cloaked their claims in contract and unfair trade practices, their dispute arises from the USPS's failure to deliver a package containing time-sensitive stock options on time, which 28 U.S.C. § 2680(b) unambiguously bars.³

Plaintiffs cite a Seventh Circuit case, Azar v. United States Postal Service, 777 F.2d 1265 (7th Cir. 1985), in support of their claim of equitable estoppel arising from the postal clerk's failure to mention the limitations of liability on the reverse of the Express Mail label.⁴ In Azar, the plaintiff had explicitly asked not one but two postal employees to insure a package containing a \$7,500 watch, both of whom informed him that the package would be insured for up to \$50,000 automatically, id. at 1267. The Seventh Circuit held that the plaintiff's reliance

³ See Hudak v. United States Postal Service, 1994 WL 45134 (E.D.Pa. Feb. 15, 1994)(dismissing suit against USPS for its four-day delay in delivering a Priority Mail package under 28 U.S.C. § 2680(b)); Gowarnis v. United States Postal Service, 1988 WL 61741 *2 (E.D.Pa. June 10, 1988)("While the characterization of this claim as one for false advertising or failure to warn is perhaps artful, the ultimate claim of liability remains misdelivery...and, therefore, is barred by the FTCA").

⁴ "Estoppel is an equitable doctrine invoked to avoid injustice in particular cases", Heckler v. Community Health Servs. Of Crawford County., Inc., 467 U.S. 51, 59 (1984).

on the postal workers' information was reasonable and that estoppel could be applied to Express Mail service, despite that the Express Mail form disclosed a \$500 maximum for merchandise, id. at 1270. Moreover, Azar held that "affirmative misconduct is not a requirement in the unique situation in which a party seeks to estop the Postal Service from relying on Express Mail insurance limits", id. at 1271.⁵

In this Circuit, parties attempting to estop a private party must establish "that they relied to their detriment on their adversary's misrepresentation and that such reliance was reasonable because they neither knew nor should have known the adversary's conduct was misleading", Fredericks v. Commissioner of Internal Revenue, 126 F.3d 433, 438 (3d Cir. 1997). When a party seeks to estop the Government, our Court of Appeals has imposed "an additional burden on claimants to establish some 'affirmative misconduct on the part of the government officials'", id. Although our Court of Appeals has not addressed

⁵ When confronted with similar claims, the First, Fifth and Ninth Circuit Courts have, to varying degrees, rejected the reasoning or outcome of Azar, see A.E. Alie & Sons, Inc. v. United States Postal Service, 897 F.2d 591, 593 (1st Cir. 1990) ("In spite of a case such as Azar, where it was found reasonable for a customer, who was given an official printing to the contrary, to rely on the clerk's interpretation because he did not have his glasses with him, we decline to recognize the reasonableness of relying on the oral representation of a postal worker that a statement on an official receipt is meaningless"); Rider v. United States Postal Service, 862 F.2d 239 (9th Cir. 1988) (holding that absent affirmative misconduct on the part of USPS plaintiff cannot proceed under estoppel theory); Moody v. United States, 783 F.2d 1244, 1247 (5th Cir. 1986) (concluding that plaintiff's failure to ascertain, "in a specific and affirmative manner", the limitation on the amount of insurance could not support claim of estoppel).

whether to create a narrow exception for Express Mail claims, we need not reach that question.

Under the circumstances of this case, we do not find that plaintiffs' reliance was reasonable when the postal employee failed to describe the limitations of liability that were clearly referenced on the upper right corner of the Express Mail label. Therefore, any estoppel claim must fail.