

*Subaag Jewellers Ltd. v. The
Alarm Factory Inc., 2015 ONSC
3542*

Law Presentation

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OUTLINE

- *Overview of case facts*
- *Summary of the legal issue(s)*
- *Review of the legal arguments*
- *Summary of Court's decision*
- *Critical analysis of case*



Overview of case facts

- Plaintiff: *Suhaag Jewellers Ltd*
- Defendant: *The Alarm Factory Inc.*
- Case: The plaintiff is seeking damages for a jewellery robbery incident which apparently occurred sometime around August 28, 2012. The plaintiff maintains that the defendant is implicated due to the defective security monitoring system which failed in preventing the theft from occurring. The defendant on the other hand is seeking a dismissal of the motion on the basis of an important exclusion clause contained within the mutually endorsed contract agreement.

Summary of the legal issue(s)

- Plaintiff filed a motion in court after a burglary incident at the plaintiff's shop
- Claim is filed on grounds of being offered defective security monitoring systems which made the crime possible
- The defendant exerts his right to exercise an exclusion clause which grants the right to exempt him from prosecution in the event of inadvertent failure of the security systems

REVIEW OF LEGAL ARGUMENT(S)

- Principal of plaintiff, Satish Verma maintains lack of formal education made it difficult to fully discern contractual agreement
- Plaintiff maintains defendant did not adequately explain the technicalities of the contract, particularly the exclusion clause
- Defendant maintained the agreement was adequately explained to the plaintiff and the agreement was autonomously and wilfully sign by him under no circumstances of duress or coercion

Summary of court's decision

- In reference to the *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)* [2010] 1S.C.R. 69, the court pointed out the exclusion clause maintained by the defendant was not a result of unfair bargaining power
- Plaintiff was not coerced into signing the agreement thus the exclusion clause was conscionable and valid
- The plaintiff was obliged to obtain insurance since the defendant did not provide an insured service
- In reference to a precedent set by the Court of Appeal for Ontario on *Fraser*, the judge ruled that the exclusion clause was not unconscionable and thus enforceable.

Critical analysis of case

- Judgement passed by the Ontario Superior Court of Justice is sound and sets a good precedent for future cases
- The testimony of the plaintiff was not reliable since cross examination revealed that he had indeed obtained a Bachelor's degree education in his native India
- The judgement passed by the Court thus rightfully exonerated the defendant from all wrongdoing

Reference(s)

1. Suhaag Jewellers Ltd. v. The Alarm Factory Inc., 2015 ONSC 3542