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D. Malin, Inc. v. Audio Central Alarm Co.

1999 WL 33433550 (Mich. App.)

A lessor's liability was limited by a liquidated damages provision in a lease agreement covering a burglar and fire alarm system, despite the lessee's assertion that the lessor's subsequent installation of backup equipment converted the alarm system into a new system not covered by the original lease agreement. In 1976, D. Malin, Inc. ("Malin") leased a burglar and fire alarm system from Audio Central Alarm Company ("Audio Central"). The parties' lease agreement contained a liquidated damages provision that limited Audio Central's liability for negligence to the greater of three months' rental service charge or \$250. In February 1996, Central Audio installed backup equipment to the alarm system. Shortly thereafter, Malin was burglarized when the alarm system failed.

Malin sued Alarm Central, alleging negligence and gross negligence. Alarm Central moved for a summary judgment on both claims. The trial court partially granted Alarm Central's motion, holding that (1) the evidence did not support a finding of gross negligence, (2) the parties were bound by the liquidated damages provision limiting liability for negligence, and (3) there was a genuine issue of material fact as to whether the backup equipment was subject to the original lease. The Michigan Court of Appeals affirmed. It first reasoned that the opinion testimony of the president of another alarm company was impermissible to establish gross negligence and that the simple allegation



that Alarm Central did not provide the services it had promised to provide was insufficient evidence of gross negligence. The court then concluded that Alarm Central's installation of the backup equipment did not convert the alarm system into a new system not covered by the original lease agreement. Thus, as held by the trial court, the liquidated damages provision in the original lease agreement applied to the negligence claim with respect to the original system, but there was an issue for a jury as to whether the backup equipment was also covered by the lease.

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