NY CLS CPLR § 4544

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New York

Consolidated Laws Service **>**

Civil Practice Law And Rules (Arts. 1 — 100) **>**

Article 45 Evidence (§§ 4501 — 4551)

§ 4544. Contracts in small print.

The portion of any printed contract or agreement involving a consumer transaction or a lease for space to be occupied for residential purposes where the print is not clear and legible or is less than eight points in depth or five and one-half points in depth for upper case type may not be received in evidence in any trial, hearing or proceeding on behalf of the party who printed or prepared such contract or agreement, or who caused said agreement or contract to be printed or prepared. As used in the immediately preceding sentence, the term “consumer transaction” means a transaction wherein the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes. No provision of any contract or agreement waiving the provisions of this section shall be effective. The provisions of this section shall not apply to agreements or contracts entered into prior to the effective date of this section.

History

Add, L 1975, ch 370, § 1; amd, L 1979, ch 474, § 1, eff Sept 1, 1979.

Annotations

Notes to Decisions

In maritime cases, state court may not limit party's substantive rights by applying its own procedural rules if those rules would significantly affect result of litigation, and CLS CPLR § 4544 may therefore not be employed to nullify contractual limitation enforceable under federal maritime law. Lerner v Karageorgis Lines, Inc., 66 N.Y.2d 479, 497 N.Y.S.2d 894, 488 N.E.2d 824, 1985 N.Y. LEXIS 17925 (N.Y. 1985).

In an action based on a contract for the construction and sale of a one-family dwelling, Trial Term improperly denied defendant's motion to strike the action from the Jury Calendar and to place it on the Nonjury Calendar, in accordance with a provision of the contract waiving a jury trial, where its decision was based on the conclusion that the contract was a consumer transaction, which conclusion was erroneous in view of the fact that such contracts are not included in the express terms of CPLR § 4544. Drelich v Kenlyn Homes, Inc., 86 A.D.2d 648, 446 N.Y.S.2d 408, 1982 N.Y. App. Div. LEXIS 15191 (N.Y. App. Div. 2d Dep't 1982).

Agreement to arbitrate contained in consumer contract is unenforceable if set forth in small print in violation of CLS CPLR 4544. Filippazzo v Garden State Brickface Co., 120 A.D.2d 663, 502 N.Y.S.2d 258, 1986 N.Y. App. Div. LEXIS 56768 (N.Y. App. Div. 2d Dep't 1986).

Proof of alleged oral agreement giving plaintiffs right to stay at defendants' residence indefinitely was not barred by parol evidence rule where there was fact issue as to whether print in parties' written agreement limiting residency to 4 years was less than 8 points in depth, and thus question as to whether parties had enforceable written contract; further, as to those plaintiffs who lived in defendants' residence for 2 years before signing written agreements limiting their residency to 4 years, parol evidence was admissible to show that written agreements were not supported by consideration. Priolo v St. Mary's Home for Working Girls, 207 A.D.2d 664, 616 N.Y.S.2d 36, 1994 N.Y. App. Div. LEXIS 8646 (N.Y. App. Div. 1st Dep't 1994).

Contract for installation of marble floors in plaintiffs' condominium fell within ambit of CLS CPLR § 4544 as one involving "consumer transaction" wherein service performed is primarily for household purposes. "Terms and Conditions" in subject contract were not admissible in evidence against plaintiffs since they were printed in type size that failed to satisfy type size

requirement under CLS CPLR § 4544. Bauman v Eagle Chase Assocs., 226 A.D.2d 488, 641 N.Y.S.2d 107, 1996 N.Y. App. Div. LEXIS 4467 (N.Y. App. Div. 2d Dep't 1996).

Car rental company was entitled to summary judgment on its cross claim for contractual indemnity against individual defendant in personal injury action where (1) rental agreement provided that individual defendant, as lessee, would indemnify company for all claims arising from use of rental vehicle, (2) individual defendant was involved in accident while driving rental vehicle, (3) company did not violate CLS CPLR § 4544, and (4) company was not required, as self-insurer, to provide at least minimum uninsured motorist insurance coverage under CLS Veh & Tr § 388, because § 388 was designed to protect injured persons, and individual defendant was not injured person. Cuthbert v Pederson, 266 A.D.2d 255, 698 N.Y.S.2d 254, 1999 N.Y. App. Div. LEXIS 11307 (N.Y. App. Div. 2d Dep't 1999).

Indemnification provisions of vehicle rental agreement were enforceable, even though print was smaller than that required by CLS CPLR § 4544, where § 4544 applies to consumer transactions that are “primarily for personal, family or household purposes,” and there was no evidence that vehicle was rented for such purposes. American Home Assur. Co. v ELRAC, Inc., 273 A.D.2d 330, 709 N.Y.S.2d 593, 2000 N.Y. App. Div. LEXIS 7057 (N.Y. App. Div. 2d Dep't 2000), rev'd, 96 N.Y.2d 58, 724 N.Y.S.2d 692, 748 N.E.2d 1, 2001 N.Y. LEXIS 695 (N.Y. 2001).

Automobile rental agreement was not subject to and in violation of N.Y. C.P.L.R. 4544, where there was no evidence that the rented vehicle was primarily for personal, family, or household purposes, or that the typeface of the rental agreement was too small. Kallaitzakis v ELRAC, Inc., 296 A.D.2d 531, 745 N.Y.S.2d 217, 2002 N.Y. App. Div. LEXIS 7565 (N.Y. App. Div. 2d Dep't 2002).

Because there was a triable issue of fact as to whether the type size of an lease indemnification provision met the requirements of N.Y. C.P.L.R. 4544, and whether the leased vehicle was a rental within the meaning of N.Y. Veh. & Traf. Law § 370(3), a hearing was to be held to determine whether the assignees’ recovery should be limited to an amount in excess of the minimum amount of liability insurance required by that statute. Schiffman v Hann Auto Trust, 56

A.D.3d 650, 867 N.Y.S.2d 351, 2008 N.Y. App. Div. LEXIS 10389 (N.Y. App. Div. 2d Dep't 2008).

Contrary to the issuer's contention, the cardholder did not assert a private right of action under N.Y. C.P.L.R. 4544, but, rather, the cardholder alleged that the issuer's imposition and collection of dormancy fees from the cardholder and his class constituted a breach of contract because the dormancy fees charged on a gift card were unreasonable, excessive, and unenforceable, including under N.Y. C.P.L.R. 4544; the cardholder alleged that the manner in which the dormancy fees were disclosed was improper, and, thus, sufficiently alleged a cause of action to recover damages for breach of contract based upon the alleged improper disclosure of fees. Lonner v Simon Prop. Group, Inc., 57 A.D.3d 100, 866 N.Y.S.2d 239, 2008 N.Y. App. Div. LEXIS 7785 (N.Y. App. Div. 2d Dep't 2008).

A jury waiver clause in a lease that does not conform with CPLR 4544, which mandates a minimum size print for consumer contracts and leases, is unenforceable for failure to meet the minimum standards for size of type established by the Legislature; trial by jury is a substantial right and it is the duty of the court to effectuate the legislative purpose. After the court held, in a prior order, that a jury waiver clause in a lease was unenforceable for failure to meet the CPLR 4544 minimum standards for size of type in consumer contracts and leases, a motion by the landlord for re-argument pursuant to CPLR 2221, asserting that the court misapprehended applicability of CPLR 4544, was denied since this point was never raised in the original motion papers and the court was not obligated to search out issues not raised in those papers; the court cannot convert the landlord's reargument motion into a motion based upon newly discovered evidence in the interests of justice since there is no justice in the denial of such a substantial right as trial by jury and it is not a newly discovered fact that counsel could not have discovered prior to the motion, by the exercise of due diligence. Sorbonne Apartments Co. v Kranz, 96 Misc. 2d 396, 409 N.Y.S.2d 83, 1978 N.Y. Misc. LEXIS 2614 (N.Y. Civ. Ct. 1978).

A clear and legible jury waiver clause contained in a lease in print less that eight points in depth should not be given effect under CPLR 4544 which provides that any portion of a residential

lease is inadmissible “where the print is not clear and legible and is less than eight points in depth” since the intention of the Legislature was that the type be both clear and of the requisite size; otherwise, a tenant could be bound by a lease provision which although of the proper size, is nevertheless illegible and such a strained and ludicrous statutory interpretation cannot be sustained. Koslowski v Palmieri, 98 Misc. 2d 885, 414 N.Y.S.2d 599, 1979 N.Y. Misc. LEXIS 2159 (N.Y. App. Term 1979).

A jury waiver clause in a residential lease was not enforceable by a landlord in a proceeding against a tenant where the type size of the printed lease failed to meet the minimum standards set out in CPLR § 4544, notwithstanding that the lease was not prepared by the landlord, but by his predecessor in interest, since the waiver provision was unenforceable as between landlord’s predecessor in interest and tenant, and the fact that landlord, upon his purchase of the property, could not compel tenant to execute a new lease, would not act to exempt him from the requirements of the statute. Balram v Etheridge, 113 Misc. 2d 251, 449 N.Y.S.2d 389, 1982 N.Y. Misc. LEXIS 3284 (N.Y. Civ. Ct. 1982).

Agreements opening time-deposit accounts do not involve consumer transactions within the meaning of CPLR § 4544. Ayala v Jamaica Sav. Bank, 121 Misc. 2d 564, 468 N.Y.S.2d 306, 1983 N.Y. Misc. LEXIS 3963 (N.Y. Sup. Ct. 1983), aff'd, 109 A.D.2d 723, 486 N.Y.S.2d 1002, 1985 N.Y. App. Div. LEXIS 47200 (N.Y. App. Div. 2d Dep't 1985).

In action against stock brokerage firm, firm’s motion to compel arbitration of claim for conversion of money in client account will be denied where demand for arbitration by firm is based on agreement drawn up by it which is virtually impossible to read, in violation of size and legibility requirements established by CLS CPLR 4544. Hacker v Smith Barney, Harris Upham & Co., 131 Misc. 2d 757, 501 N.Y.S.2d 977, 1986 N.Y. Misc. LEXIS 2547 (N.Y. Civ. Ct. 1986), aff'd, 136 Misc. 2d 169, 519 N.Y.S.2d 92, 1987 N.Y. Misc. LEXIS 2403 (N.Y. App. Term 1987).

Jury waiver clause written in small type contained in vacancy lease for rent-stabilized apartment that predated effective date of CLS CPLR § 4544 was enforceable where tenant took possession under successive renewal lease which incorporated by reference terms and

conditions of vacancy; statute is not retroactive. Tenant waived her CLS CPLR § 4544 defense by asserting counterclaim for attorneys' fees in reliance on attorneys' fees provision in vacancy lease which had same size print as allegedly invalid jury waiver clause; since tenant had no reason to question legibility and size of type on attorneys' fees provision, she had no cause to complain about type in jury waiver clause. King Enters. v O'Connell, 172 Misc. 2d 925, 660 N.Y.S.2d 283, 1997 N.Y. Misc. LEXIS 225 (N.Y. Civ. Ct. 1997).

Tenant who was prevailing party in nonpayment proceeding could not be denied award of attorneys' fees on ground that type size of parties' lease and attorneys' fees provision therein was smaller than 8-point height requirement of CLS CPLR § 4544 as (1) § 4544 did not apply where lease was signed before its enactment, (2) even if § 4544 applied, it does not declare small-type consumer contracts or residential leases absolutely void or unenforceable, but rather empowers non-drafting party to object if drafter offers small-type document in evidence, while drafter may not object, and (3) even if § 4544 rendered attorneys' fees provision in lease ineffectual, tenant retained statutory right to attorneys' fees under CLS Real P § 234. Jocar Realty Co. v Galas, 176 Misc. 2d 534, 673 N.Y.S.2d 836, 1998 N.Y. Misc. LEXIS 136 (N.Y. Civ. Ct. 1998).

CLS CPLR § 4544 is preempted by 12 CFR § 560.2(a) because provisions of that statute concerning specific type size would create separate set of regulations concerning type size of credit agreement disclosures, thereby thwarting goal of § 560.2(a) that there be uniform set of federal lending regulations. Credit card agreement, in which "x-height" of lower case letters was 4 points, complied with CLS CPLR § 4544 which mandates that print be in at least 8-point type because, under CLS Gen Const § 62, whenever law states size of type required, type size requirement is met if x-height of type is minimum of 45 percent of specified point size. Albank, FSB v Foland, 177 Misc. 2d 569, 676 N.Y.S.2d 461, 1998 N.Y. Misc. LEXIS 274 (N.Y. City Ct. 1998).

Provisions of car rental agreement with print less than requisite size were unenforceable under CLS CPLR § 4544 even if such provisions were clear and legible; court rejected car rental

company's contention that statutory phrase "point in depth" refers to space between sentences as opposed to size of type. Worldwide Ins. Co. v United States Capital Ins. Co., 181 Misc. 2d 480, 693 N.Y.S.2d 901, 1999 N.Y. Misc. LEXIS 314 (N.Y. Sup. Ct. 1999).

Contract in small print may not be entered into evidence; the trial court erred in dismissing a claim for unfair business practices on the mistaken belief that a group of credit card debtors were attempting to create a private right of recovery. Sims v First Consumers Nat'l Bank, 303 A.D.2d 288, 758 N.Y.S.2d 284, 2003 N.Y. App. Div. LEXIS 3199 (N.Y. App. Div. 1st Dep't 2003).

In a summary holdover action which a cooperative housing corporation filed against a cooperator who refused to vacate an apartment, the trial court refused to consider the cooperator's argument that N.Y. C.P.L.R. 4544 precluded the court from admitting an agreement he signed with the corporation into evidence because the argument was not timely, but stated that even if the argument could be considered, it would be rejected because the parties' agreement complied with N.Y. C.P.L.R. 105(t). Gouveneur Gardens Hous. Corp. v Lee, 769 N.Y.S.2d 829, 2 Misc. 3d 525, 2003 N.Y. Misc. LEXIS 1574 (N.Y. Civ. Ct. 2003).

Credit card user did not meet her burden of proving that an arbitration provision in a credit card agreement violated the type-size requirement of N.Y. C.P.L.R 4544, where the size of the arbitration provision was of the same size type as the rest of the agreement. Tsadilas v Providian Nat'l Bank, 13 A.D.3d 190, 786 N.Y.S.2d 478, 2004 N.Y. App. Div. LEXIS 15303 (N.Y. App. Div. 1st Dep't 2004), app. denied, 5 N.Y.3d 702, 799 N.Y.S.2d 773, 832 N.E.2d 1189, 2005 N.Y. LEXIS 1228 (N.Y. 2005).

Opposing expert affidavits regarding the size of the type used in a vehicle lease created a genuine issue of fact that precluded summary judgment in favor of an insurer in a contractual indemnification action based on language in the lease. Gulf Ins. Co. v Kanen, 13 A.D.3d 579, 788 N.Y.S.2d 132, 2004 N.Y. App. Div. LEXIS 15702 (N.Y. App. Div. 2d Dep't 2004).

Finance company was entitled to summary judgment as to claims of breach of a lease agreement for medical equipment against a corporation, as the allegedly inadequate print size of

the lease did not render the lease unenforceable because N.Y. C.P.L.R. 4544 applied only to transactions primarily for personal, family, or household purposes. Key Equip. Fin., Inc. v South Shore Imaging, Inc., 39 A.D.3d 595, 835 N.Y.S.2d 268, 2007 N.Y. App. Div. LEXIS 4568 (N.Y. App. Div. 2d Dep't 2007).

In an action alleging deceptive practices regarding dormancy fees imposed on a gift card, an employee could rely on N.Y. C.P.L.R. § 4544 as while the gift card was given to the employee by her employer, the gift card still involved a consumer transaction; the ultimate intended use of the card was for the employee to purchase consumer goods with it for personal, family, or household purposes. Goldman v Simon Prop. Group, Inc., 58 A.D.3d 208, 869 N.Y.S.2d 125, 2008 N.Y. App. Div. LEXIS 8993 (N.Y. App. Div. 2d Dep't 2008).

Research References & Practice Aids

Jurisprudences:

19A NY Jur 2d Conflict of Laws § 72. .

21 NY Jur 2d Consumer and Borrower Protection § 2. .

23 NY Jur 2d Contribution, Indemnity, and Subrogation § 84. .

57 NY Jur 2d Evidence and Witnesses § 241. .

74 NY Jur 2d Landlord and Tenant § 36. .

Law Reviews:

Evidence symposium. 52 Cornell L.Q. 177.

Treatises

Matthew Bender’s New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4544, Contracts in Small Print.

Matthew Bender’s New York AnswerGuides:

Matthew Bender’s New York Practice Guides:

LexisNexis AnswerGuide New York Civil Litigation § 10.08. Admitting Record Under Exceptions to Admission Requirements.

Warren’s Weed New York Real Property:

Warren’s Weed: New York Real Property § 82.16.

Matthew Bender’s New York Evidence:

1 Bender's New York Evidence § 101.13 .Determining Applicable Law.

1 Bender's New York Evidence § 119.04. Parol Evidence Rule as Applied to Contractual Elements.

1 Bender's New York Evidence § 119.05. Parol Evidence Rule as Applied to Existence or Validity of Contract.

Matthew Bender’s New York Checklists:

Checklist for Introducing Documents and Information into Evidence LexisNexis AnswerGuide New York Civil Litigation § 10.05.

Hierarchy Notes:

NY CLS CPLR, Art. 45