



Alerts

Federal Court Enforces Exculpatory Clause in Residential Alarm Contract Even Though Alarm Company Was Likely Negligent

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Alarm & Security Services Industry Alert

The absolute necessity for alarm and security companies to have properly drafted contracts with exculpatory language was demonstrated again in a case recently decided by the U.S. District Court for the District of Minnesota.

Christine Gage v. HSM Electronic Protection Services, Inc., d/b/a Stanley Convergent Security Solutions, Inc., 09-2141 (June 14, 2010).

In 2006, Christine Gage (Gage) signed a "Residential Agreement" with HSM Electronic Protection Services, Inc. for the company to install a security system and provide alarm monitoring services for her home. HSM was thereafter acquired by Stanley Convergent Security Solutions, Inc. (Stanley).

On November 21, 2008, Stanley received a low temperature alarm from Gage's residence. One of Stanley's central station operators acknowledged the alarm and pushed a button to initiate a call to the residence. The incident was then closed. Upon receipt of an alarm, Stanley's policy required operators to call the premises and, if no one answered, to call the persons identified on the customer's call list. Stanley made audio recordings of calls to its customers' premises.

Stanley was unable to locate the recording of its central station operator to the Gage residence in response to the November 21, 2008, low temperature alarm. The company admitted that one possible explanation for this was that its central station operator did not actually speak with anyone. Thus, while Stanley's records indicated that its operator had initiated a call to the phone number listed on the Residential Agreement, there was no evidence that the operator advised anyone of the low temperature alarm.

On January 16, 2009, the furnace in Gage's residence failed due to low temperature. A pipe consequently burst and resulted in property damage in excess of \$250,000. Gage claimed that Stanley had been notified that the telephone number on the Residential Agreement was not operational and that the company had been provided a new call list and telephone numbers prior to November 21, 2008. Stanley disputed the latter claim.

Gage, through her property insurer, sued Stanley alleging wilful and wanton negligence and fraud in an effort to circumvent the exculpatory clause in the Residential Agreement. The United States District Court for the District of Minnesota, in ruling on the parties' cross-motions for summary judgment,

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granted Stanley's motion for summary judgment and denied plaintiff's motion. The court conducted an analysis of wilful and wanton conduct, considering cases across the country in so doing. It determined that the conduct of Stanley's employee of improperly responding to the low temperature alarm after receiving the alarm signal may have been negligent, but that it did not evince the recklessness necessary to avoid the exculpatory clause in the Residential Agreement. Gage's recovery was consequently limited to the specified amount in the Agreement. The court also granted summary judgment in favor of Stanley on the fraud (and other intentional tort claims) finding that plaintiff failed to allege the requisite factual specificity to support her claims.

For more information, please contact [Philip R. Kujawa](#) or your regular [Hinshaw](#) attorney.

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