

MARKS & WEINBERG, P.C.

Cannon Financial Services v. Medico Stationery Service 2002 WL 31750234 (N.Y.A.D. 1 Dept.)

This case is a great example of the way courts are supposed to treat Uniform Commercial Code "finance leases." Lessee was unhappy with the equipment and stopped paying the lessor. The lessor sued and the court granted lessor summary judgment, requiring the lessee to make payments regardless of whether the equipment was satisfactory. The court cited provisions in the lease which explicitly provided: (1) that the lessor made no representations or warranties of any kind with respect to the equipment; (2) that all warranties were made by the supplier, dealer or manufacturer; and (3) that the lessee was required to make payments no matter what might happen. The court also noted that "[t]hese provisions were typical of a finance lease as defined in U.C.C. 2-A-103(g) and [that] the subject agreement states that it was intended as such."

Other helpful holdings of the court include: (1) a dismissal of the lessee's complaint that the lessor and the supplier of the equipment were wholly owned subsidiaries of the manufacturer (the court noted that "no basis exists for piercing these corporate veils"); and (2) a dismissal of the lessee's complaint that the lease only provided the lessee with ten days to inspect the equipment before the hell or high water clause kicked in. Because of the court's strong understanding of Uniform Commercial Code finance leases, its opinion took less than a single page.



The terminology "finance lease" is sometimes a source of confusion. Many people in the leasing industry use that term to refer to a transaction which, although called a "lease", is actually a loan from the lessor to the lessee with the "leased property" serving as collateral for the loan—such as a lease with a one dollar purchase option or a lease with a mandatory purchase option. Those people distinguish these sorts of finance or financing leases from "true leases" which are also called "tax leases" or "operating leases."

Under Article 2A of the Uniform Commercial Code (the "UCC"), the term "finance lease" is defined to be a special kind of true lease which involves three parties--the lessor, the lessee and the supplier of the leased equipment. In such transactions: (1) the lessor does not select, manufacture, or supply the goods; (2) the lessor does not own the goods before the lease was arranged; and (3) the lessee either approves the purchase contract or receives specified warranty and supplier information before signing the lease agreement. Due to the limited role that a lessor plays in a finance lease and the important role that such transactions play in our economy, Article 2A of the UCC offers special statutory protection to lessors who lease goods in this manner.

As noted in the comments to the UCC, the various sections of Article 2A operate to "substitute the supplier of the goods for the lessor as the party responsible for warranties and the like." UCC §2A-101. For example §2A-209 automatically extends the seller's warranties (and their exclusions) to the lessee and automatically excludes any implied warranties of fitness or merchantability by the lessor. In addition, §2A-516 and §2A-517 state that, once the lessee has accepted the property, it has no right to revoke that acceptance. Most importantly, §2A-407 and §2A-508 create a statutory "hell or high water" clause by making the lessee's obligations (including payment obligations) irrevocable and independent of the lessor's or supplier's obligations. In other words, once the lessee accepts property under a finance lease, the lessee is obligated by statute to perform its obligations under that lease "come hell or high water."



All of the aforementioned protections afforded lessors under Finance Leases can be obtained through contractual provisions. *See* UCC §7-2A-103, comment (g). Well respected authorities therefore encourage lessors to include express "hell or high water" clauses if for no other reason than to avoid arguments about whether a "finance lease" is involved. *See e.g.* Ian Shrank and Arnold G. Gough, *Equipment Leasing-Leveraged Leasing* (PLI 4th ed. 1999), Vol. 1, §3:1.5[D].

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