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Colonial Pacific Leasing v. McNatt

486 S.E.2d 804 (Ga., 1997).

Lessee contracts to purchase equipment from vendor and finance purchase through leases with broker, who assigns leases to ColPac and Datronic. Lessee signs Acceptance Certificates, but immediately notifies all parties that equipment does not properly work. After some delay, lessor pays vendor for equipment. Lessee refuses to make payments and lessor repossesses equipment.

Lessee (instead of waiting to be sued) sues vendor and lessors to rescind leases and claims damages for "negligent release of funds" to vendors. The Georgia Court of Appeals overturned a verdict for lessors, claiming that the hell or high water clause was unenforceable due to the fraudulent misrepresentation of the vendor and the lessors as its agent. The Supreme Court reverses this decision and finds for lessors, enforcing the hell or high water clause is to be enforced.

This case contains some very good language regarding Article 2A and the hell or high water clause. Among other things, the court notes that the language of the lease will not protect the lessor from a claim that it knew that a lease was in default at the time it took assignment from the broker or from certain equitable remedies. However, a hell or high water lease is protected, by its language from claims of breach of warranty and the like.



A final note on this important case: The court did allow the trial to proceed on one important issue: Whether the lessors should have made any payment to the vendor where they knew (despite the Acceptance Certificate) that the equipment was not properly functioning. This is a point to be borne in mind. Even if the lessee signs (probably without reading) an Acceptance Certificate, a lessor should exercise caution before funding a lease if it is aware that the equipment is not functioning properly. Otherwise, the lessor may simply be buying a headache.

Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit leaselawyer.com or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

