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## ESP Financial Services, LLP v. Vielot

794 N.Y.S.2d 337 (May 3, 2005)

This case addresses whether a waiver of UCC rights prohibits a party from claiming the statute of limitations as a defense.

ESP Financial Services ("Lessor") filed suit against Erick Vielot ("Lessee") in September 2003, for breach of a leasing agreement. AT&T Capital Leasing Services ("AT&T") leased auto emissions testing equipment to Lessee in November 1997. Several months later, AT&T assigned its rights in the lease to Lessor. In September 1999, Lessee defaulted on the lease and Lessor repossessed the equipment in February 2000. However, Lessor did not file suit until September 2003. Lessee moved to dismiss the complaint on the grounds that it was filed beyond the four-year statute of limitations period under UCC 2A-506. In response, Lessor argued that the lease agreement included a waiver clause, in which Lessee waived "all rights and remedies conferred upon a lessee by Article 2A." Lessor, therefore, claimed that the action should be examined under Massachusetts's non-UCC six-year statute of limitations period.

The Court dismissed Lessor's claim, holding that the contract did not exclude all aspects of Article 2A. Rather, it was only a waiver of "rights and remedies." The statute of limitations alone is neither a right nor a remedy, since it does not confer a clear benefit on



any one party. As a result, the Court held that a four-year statute of limitations period was not included under this waiver. The Court held that the lease agreement did not constitute a waiver and the plaintiff's claim was dismissed as untimely.

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