

# MARKS & WEINBERG, P.C.

## **Ex parte LeaseComm Corp. 2003 WL 22272912, (Ala. Oct. 3, 2003)**

One claim that unhappy lessees often use in an attempt to avoid the hell-and-high-water nature of finance leases is to argue "fraud in the inducement" under the theory that, if the lessee was induced by fraud into executing the lease, the provisions of the lease never became effective and therefore were not relevant to the law suit. In this case, the court held a forum selection clause that was contained in the lease to be enforceable even in the face of a claim of fraudulent inducement. Jeffrey Sisk, a convenience store owner ("Lessee") leased credit-card processing equipment from Leasecomm. The lease agreement contained a forum-selection clause that named Massachusetts as the choice of venue for all disputes arising out of the agreement. A few years into the agreement, the leased equipment malfunctioned and Leasecomm refused to repair it. Lessee brought suit against Leasecomm in Etowah Circuit Court in Alabama, alleging fraud in the inducement, continuing fraud, misrepresentation and breach of contract. Leasecomm moved to dismiss the complaint for improper venue or alternatively to transfer the case to an appropriate court in Massachusetts. The trial court denied Leasecomm's motion.

The Alabama Supreme Court reversed the trial court, holding that forum-selection clauses should be enforced so long as they are neither unfair nor unreasonable. Any party challenging a forum-selection clause must establish either that either: (a) enforcement would be unfair because the contract was affected by fraud, undue influence or



overweening bargaining power, or (b) enforcement would be unreasonable because the forum would be seriously inconvenient for the trial of the action.

The Court further held that it was not enough to show fraud in the inducement of the contract generally to invalidate the forum-selection clause, stating "the proper inquiry is whether the forum-selection clause is the result of fraud in the inducement in the negotiation or inclusion in the agreement of the forum selection clause itself [and] if the claim of fraud in the inducement is directed towards the entire contract, the fraud exception to enforcement of the forum selection clause does not apply."

In this particular case, the alleged fraud was that Lessee was induced to sign the contract before reading it, under the guise that he could read the contract at a later date and cross out any provisions he did not like. The Court held that the fraud was alleged towards the entire contract and not the forum selection clause in particular. The Court also noted that Lessee had failed to demonstrate undue influence, overweening bargaining power or serious inconvenience for the trial of the action. Thus the forum-selection clause was held valid and the Supreme Court directed the trial court dismiss the action for improper venue.

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