

MARKS & WEINBERG, P.C.

First Federal Financial Service, Inc. v. Derrington's Chevron, Inc.

602 N.W.2d 144 (Wis. Ct. App. Sept. 22, 1999)

This is an unconscionability case arising out of a finance lease. The trial court had determined that the jurisdictional clause in the lease was unconscionable. The lease was signed by the lessee in California and was solicited by a vendor salesperson in California. The terms of the lease were never explained to the lessee and the lessor drafted the lease. The jurisdictional clause was on the back of the lease in very small print.

The equipment leased was a security system for the Defendant's (Derrington's) Chevron station. When the salesperson persuaded Derrington to purchase the security equipment, he informed Derrington that in order to receive the 24 hour service agreement, a 39 month lease had to be signed. Cash was unacceptable. The lease relationship went sour when the security equipment quit working two weeks into the lease. Defendant lessee quit making payments to the lessor. The lessor then filed suit in Waukesha County, Wisconsin to collect on the debt. The trial court held the venue selection clause to be unconscionable and dismissed the case.

The Lessor appealed to this court. This court affirmed the ruling by the trial court. The venue clause in the lease was both procedurally and substantively unconscionable. The court looked to two main factors in finding procedural unconscionability ó that the lessor drafted the contract and that the contract terms were not explained to the Derringtons.



The lessor's name did not even appear anywhere on the lease except for the back page in small print. The court called the lessor a "ghost-like" party to the transaction because only the supplier's name and Derrington's name appeared on the top of the lease.

As for the contract terms themselves (substantive unconscionability), the court found that the venue clause selecting Wisconsin as the proper venue could lead to considerable inconvenience and expense for the Derringtons. Furthermore, there was no basis for jurisdiction in Wisconsin other than the clause in the lease. The lease was signed in California and the defendants and witnesses are in California. The court held: the lessor "cannot sit in its offices in southeastern Wisconsin and expect lessees from across the country to march to Waukesha county to defend themselves from collection actions."

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