MARKS & WEINBERG, P.C.

IOS Capital, Inc. v. Jacobi,

2003 WL 21241369 (Mo. App. W.D.)

A company operated by a husband and wife doing business as South 65 Storage ("Lessee") entered into a lease with IOS Capital, Inc. ("Lessor") covering several pieces of office equipment. When Lessee failed to make a lease payment, Lessor called a default. The central issue at trial was whether Lessor, by picking up the leased equipment, accepted Lessee's offer to voluntarily return the equipment in exchange for a cancellation of the lease. The state appellate court held that, although Lessee made an offer to cancel the lease, Lessor's repossession of the equipment did not constitute acceptance of the offer because Lessor was merely exercising its contractual rights under the lease.

The wife executed a lease on behalf of Lessee and, after making 13 monthly payments, Lessee mailed a letter to Lessor asking it to cancel the lease and to pick up the equipment. According to the letter, Lessee was õjust not able to continue to make the monthly payments.ö A short time later, Lessor picked up the equipment but left a receipt that specifically stated that õpick-up of equipment does not release customer of contractual obligations.ö When Lessor sued Lessee for remaining obligations owed under the lease, the trial court ruled for Lessee, holding that Lessee's letter constituted an offer for the voluntary return of the equipment in exchange for the cancellation of the lease and that Lessor unilaterally accepted the offer by picking up the equipment. This purported

acceptance, the trial court determined, was the final element of an accord and satisfaction releasing Lessee from further obligations under the lease.

Lessor appealed and the appellate court rejected the trial court's interpretation of the events. The court reasoned that the terms of the lease explicitly provided that it was non-cancelable and that the failure to make payments would result in default. Accordingly to the court, Lessor's repossession of the equipment could not result in an accord and satisfaction since Lessor õwas doing what it was already entitled to do under the contract.ö The court also noted that Lessor's letter to Lessee, which stated that it was still bound by the lease, constituted overwhelming evidence that Lessor was not accepting Lessee's offer.

As a side note, the appellate court rejected arguments that the lease was not binding on Lessee because it was only signed by the wife. The appeals court found that the husband and wife were jointly and severally liable for the lease obligations because they both were registered with the state as doing business as South 65 Storage when the lease was signed. Since the husband was an undisputed owner of the business, the lease listed South 65 Storage as the party, and the husband had apparently granted his wife the authority to bind the business to legal obligations as Office Manager, the husband could not claim that his failure to sign the lease agreement prevented him from being obligated by its terms.

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