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Information Leasing Corp. v. Helen King, d.b.a. Helen's Kitchen, et al.
800 N.E.2d 73 (Ohio App. 2003); 52 U.C.C. Rep. Serv.2d 443

Once again, the Article 2A "finance lease" saves the day. In a series of transactions, Information Leasing Corporation ("Lessor") leased automated teller machines ("ATMs") to individuals. A third party vendor, named Credit Card Center ("CCC"), would find a customer interested in having an ATM on its premises, arrange for that customer to sign a lease with Lessor, agree to service the machine and keep it stocked with cash, and pay the customer a monthly commission. Ms. King leased an ATM to be located in her restaurant, Helen's Kitchen, and signed as a personal guarantor of the lease. When CCC went bankrupt and stopped servicing King's ATM, King stopped making monthly lease payments to Lessor. Discovery revealed potential fraud claims against CCC and King tried to impute them to Lessor.

The Court of Appeals held that the underlying lease was a "finance lease" under Article 2A and that such a holding prevented Lessor from being responsible for the actions of CCC. The Court noted that the lease provided the necessary written notice to King of the identity of the supplier, her entitlement to promises and warranties provided to Lessor and her right to communicate with the supplier. In particular, the lease stated: "Any warranties the vendor gave to us, if any, we hereby assign (pass) to you. You may contact the vendor for a statement of such warranties, if any."



The lease itself also contained an express provision designating it as a finance lease, stating: "You agree that this is a 'finance lease' under Article 2A--Leases of the Ohio Uniform Commercial Code. By signing this Lease, You agree that either: (a) You have reviewed, approved and received a copy of the Supply Contract or (b) that we have informed you of the identity of the Supplier, that you may have rights under the Supply Contract, and that you may contact the Supplier for a description of those rights. According to the Court, "[t]he *sine qua non* of a finance lease is that the finance lessor acts as the supplier of money and not as a merchant of goods" and that was the essence of the parties' relationships here.

The Court of Appeals also held the forum-selection clause valid and enforceable. Even if King were inexperienced in business matters, though she had owned her own restaurant for 20 years, her lack of knowledge, legal terms, and familiarity with lease agreements did not invalidate the forum-selection clause in the lease in question.

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.

