

# MARKS & WEINBERG, P.C.

## **L.C. Williams Oil v. NAFCO Capital Corp.** 502 S.E.2d 415 (N.C. App. 1998)

North Carolina courts will generally not enforce forum selection clauses. The sole exception is “non-consumer loan transactions.” In this case, the plaintiff and the defendant were parties to an agreement entitled “Lease/Finance Proposal” which included a forum selection clause requiring that all claims be brought in New York County, New York.

The “Lease/Finance Proposal” provided that the plaintiff would lease certain equipment for 60 months. At the termination of the lease, the lessee had an option to purchase the leased equipment for \$1.00. When the plaintiff initiated a breach of contract action under the agreement, the defendant moved for dismissal for improper venue. The critical issue thus became whether the agreement between the plaintiff and the defendant was a lease or a “non-commercial loan transaction.”

The court determined that the agreement was indeed a commercial loan rather than an equipment lease. Central to the court’s determination was the option to purchase for \$1.00. A North Carolina statute excludes “retention or creation of a security interest” from the definition of “lease.” The State statute further holds that a security interest is created when a lessee has an option to purchase for no additional or for nominal



additional consideration. Finding that \$1.00 was mere nominal consideration, the court concluded that the agreement created a security interest and was not a lease.

Also noteworthy in the court's opinion was the fact that the total amount which the plaintiff promised to pay over the term of the agreement was \$1,106,700.00, while the agreement stated that the "quicksale value" of the equipment was in excess of \$1,000,000. Essentially, determined the court, the agreement obligated the lessee to pay the purchase price of the equipment, indicating a conditional sale rather than a lease.

Other factors influencing the court were the following: (1) the defendant-lessor was a financing company; (2) the plaintiff-lessee was responsible for maintenance, insurance, taxes and all other expenses related to ownership; (3) the agreement itself referred to the parties as "Lessor/Lender" and "Lessee/Borrower"; and (4) the agreement clearly was a commercial transaction because the plaintiff and the defendant were corporate entities, not natural persons. Having concluded that the agreement was a "non-consumer loan transaction," the court enforced the forum selection clause and dismissed the case for improper venue.

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](http://leaselawyer.com) or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

