MARKS &
WEINBERG, P.C.

Leasing One Corporation v. Caterpillar Financial Services Corp.

776 N.E.2d 408 (In. Ct. App. 2002)

Boston Equipment Corporation (õLesseeö) leased equipment from Caterpillar Financial Services, Inc. (õLessorö) and Lessor properly filed a financing statement perfecting its interest in the equipment in case the lease was deemed to be a loan instead of a true lease. Unbeknownst to Lessor, Lessee sold the equipment to R&D Homes & Supply, Inc. (õR&Dö). This unauthorized purchase of the equipment was accomplished by way of a lease from Meridian Leasing that was subsequently assigned to Leasing One Corporation (õLeasing Oneö). When Lessee defaulted, Lessor attempted to repossess the equipment.

Leasing One objected, arguing that it took free of any security interest held by Lessor pursuant to §9-320 of the Uniform Commercial Code, which allows a buyer in the ordinary course of business to take free of a security interest created by the buyerøs seller even if the security interest is perfected and the buyer knows of its existence. The Court disagreed, noting that: (a) Leasing One did not introduce sufficient evidence to show that it qualified as a buyer in the ordinary course; and (b) since the security interest was not created by the buyerøs seller, Leasing One would not take free of Lessorøs security interest even if it were a buyer in the ordinary course.

The Court was correct on its first holding since the only evidence that Leasing One provided was a copy of the check written to purchase the equipment. This evidence is insufficient to show that Leasing One õin good faith and without knowledge that the sale to [it] is in violation of the ownership rights or security interest or leasehold interest of [Lessor, bought the equipment] in ordinary course from a person in the business of selling goods of

that kind . . . .ö Without any evidence to establish that Lessee regularly sold goods of that kind, Leasing One could not establish itself as a buyer in the ordinary course.

The Courtøs second conclusion is somewhat puzzling. As the Court explained õ[b]ecause Leasing One, as assignee of R&Døs commercial lease, purchased the [equipment] from [Lessee], it does not take free of [Lessorøs] security interest.ö However, in the event the underlying lease between Lessor and Lessee was a conditional sale, Lessee would be the owner of the equipment. As owner, it would be *Lessee* who granted Lessor a security interest in the equipment in order to secure Lesseeøs obligations under the lease and, as such, the security interest would have been *created by Lessee*. Since Lessee was the entity that sold the equipment, it would appear that it was the õbuyerøs seller.ö The court cited National Shawmut Bank of Boston v. Jones as support for its holding. However, in that case, the original grantor of a security interest sold the equipment to a dealer in violation of the original agreement and that dealer subsequently resold the equipment to a buyer in the ordinary course. The Shawmut Court held that the ultimate buyer could not take free of the security interest created by the original grantor because the original grantor was not the entity that sold the equipment to the buyer in the ordinary course. These facts are clearly distinguishable from the current case where the original grantor of the security interest, Lessee, is the same entity that sold the equipment to Leasing One.

The current case does not provide sufficient details to explain the Courtøs conclusion. Perhaps the mechanism of the transaction between R&D and Leasing One confused the court. For example, the Courtøs holding would be more understandable if Leasing One entered into a sale-leaseback transaction with R&D instead of purchasing the equipment directly from Lessee. In any event, the Court came to the right conclusion by holding the Lessor had the right to repossess the equipment.

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.