

MARKS & WEINBERG, P.C.

**Republic Leasing Co. v.
Restaurant Equipment Marketing Specialists, Inc.
2000 WL 1286 (4th Cir., 2000)**

Universal Hospitality, Inc. (öUniversalö) intending to operate a mall food court business, obtained high-interest financing from Enterprise Financial Corporation (öEnterpriseö). Universal used the financing to order restaurant equipment from Restaurant Equipment Marketing Specialists, Inc. (öREMSö), and as a result, REMS prepared and directed an invoice to Universal. Universal then negotiated a written agreement with Amstat Corporation (öAmstatö) to provide further financing for the food court project.

In an apparent attempt to meet its financial obligation to Universal, Amstat requested that REMS prepare a second, öfalseö invoice, indicating that the restaurant equipment that had already been sold and invoiced to Universal under the financing arrangement with Enterprise, was in fact, sold to Amstat. Amstat then made the equipment the subject of a lease between itself and Universal. The öfalseö invoice was then provided to Republic Leasing Co. (öRepublicö), who sent a check directly to REMS for the total amount due and received an assignment of the lease agreement between Amstat and Universal. Upon receipt of the check, REMS applied part of the money to the outstanding balance of the original Universal invoice, and refunded the balance directly to Universal as an öoverpayment from lease company.ö The end result was that REMS obtained a payoff of



its original invoice to Universal and Amstat was able to meet its additional financing commitment to Universal.

Republic filed suit against REMS for negligent misrepresentation under South Carolina law after Republic relied on the "false" invoice created by REMS. The trial court awarded Republic actual and punitive damage. On appeal, REMS argued that the trial court erred in denying its motion for judgment as a matter of law, in allowing the jury to award punitive damages and in awarding fees for expenses incurred preparing a motion to compel discovery.

The appellate court affirmed all of the trial court's holdings. In order to establish a claim for negligent misrepresentation under South Carolina law, the plaintiff must prove that (1) the defendant made a false misrepresentation; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered pecuniary loss as the proximate result of that reliance on the representation. The court stated that there was sufficient evidence that REMS "knew that Amstat needed the false invoice for funding purposes, received a check in full payment of the admittedly false invoice, and "refunded" the "overpayment" directly to Universal. Therefore, judgment as a matter of law should not have been granted in favor of REMS. The court also felt that punitive damages were warranted because REMS's conduct was "willful, wanton, or in reckless disregard of" Republic's rights. Finally, the court was satisfied that the lower court possessed the inherent power to award expenses pursuant to Fed. R. Civ. P. 26(e), which mandates a party correct any discovery disclosure known to be materially incorrect.



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