

MARKS & WEINBERG, P.C.

**Tubos De Acero De Mexico, SA v.
American International Investment Corp., Inc.**
No. 00-31054, 00-31187, 2002 WL 1041042,
Fifth Circuit Court of Appeals, June 10, 2002

A Mexican corporation that manufactured and sold steel pipe used in the petrochemical industry leased a UT unit used to test the pipe from a Louisiana corporation. The Louisiana corporation served as the international marketer for a Texas-based company that designed and manufactured the UT units. According to the terms of the lease agreement, the Lessee returned the UT unit to Lessor. Upon inspection, however, the Lessor determined that the unit was damaged and that the Lessee may have breached the terms of the lease agreement. Lessor requested payment for the damages and also issued a notice of claim for breach of contract. Lessee's banks that provided a letter of credit for the lease paid Lessor the full amount owed under the letter of credit.

Lessee then filed a breach of contract, fraud, and conversion claim against Lessor. Lessor counter-claimed alleging breach of contract and violations of the Louisiana Unfair Trade Practices and Consumer Protection law (LUTPA) and the Louisiana Uniform Trade Secrets Acts (LUTSA), and seeking punitive damages. The parties filed cross-motions for summary judgment.

The court affirmed the district court's denial of summary judgment for the Lessee as to



the Lessor's claim of violation of LUTPA. The Lessee argued that (1) the Lessor lacked standing to bring a LUTPA claim; (2) the LUTPA claim was time-barred; and (3) the claim of LUTPA violations was not actionable because it alleged mere breach of contract. The court held that the Lessor had standing under LUTPA because the Lessor and Lessee actually or potentially engaged in business as competitors. The court found that the claim was not time-barred because the Lessee's conduct did not abate until the termination of the lease effectively applying the continuing violation doctrine. Finally, the court found that the LUTPA claim was not properly characterized as a mere breach of contract claim because of the unethical undertones of the Lessee's behavior during the lease period. For these reasons, the court upheld the Lessor's LUTPA claim.

The court, however, concluded that the Lessee was entitled to summary judgment on the Lessor's LUTSA claim. The Lessee argued that the Lessor's LUTSA claim should be dismissed because the Lessor did not own the alleged trade secrets and lacked standing to assert such a claim. The Lessee also argued that the Lessor failed to maintain the secrecy of any alleged trade secrets and asserted that the evidence was not sufficient to show that the Lessee misappropriated any trade secrets. Because the designer and manufacturer of the UT unit had allowed customers to inspect, photograph and examine the UT unit, the court found that no reasonable efforts were made to maintain secrecy. Therefore, the court held that no genuine issue of material fact existed as to whether Lessor reasonably maintained the secrecy of any alleged trade secrets and dismissed the Lessor's LUTSA claim against Lessee.

In addition, the court affirmed the district court's granting of summary judgment as to the Lessee on the Lessor's breach of contract claim. The Lessor claimed that the Lessee breached the lease agreement with respect to the "contingent upon" clause. The clause allowed the Lessor to terminate the contract if the condition was not fulfilled, but the clause did not create a performance obligation on the part of the Lessee. The contract was valid without the Lessee completing said condition. For these reasons, the court



affirmed the finding that the "contingent upon" clause constituted a resolatory condition. Lessor's claims of bad faith and violations of the contract obligations were subsumed in the remaining LUTPA claim, and the court affirmed the granting of summary judgment on Lessor's breach of contract claim.

Likewise, the court affirmed the district court's dismissal of Lessor's claim for punitive damages. Because a federal court exercising diversity jurisdiction applies the choice of law rules of the forum state, the court applied Louisiana choice of law rules. Furthermore, the lease agreement contained a Louisiana forum selection clause. No exceptional circumstances existed to trigger the application of the exception to the conflict of laws rule of Louisiana. Therefore, the court concluded that the dismissal of Lessor's punitive damages claim was proper.

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