

MARKS & WEINBERG, P.C.

BRM Industries, Inc. v. Mazak Corporation **42 F.Supp. 2d 176 E. D. Conn. 1999**

In this case, the lessee of machine tool equipment sued the lessor and the lessor's assignee, alleging breach of warranty, misrepresentation, negligence, and violations of the Connecticut Unfair Trade Practices Act (CUTPA). The Defendants filed a motion to dismiss or alternatively for a transfer of venue. The District Court denied the Defendants' motion to transfer venue, holding that the transfer of venue was not warranted despite a Kentucky forum selection clause in the parties' contract. According to the court, where venue is proper under a federal statute, the existence of a forum selection clause providing for a different venue does not make venue in the district where the action was filed improper, as would warrant dismissal or transfer. Rather, a motion to transfer venue calls upon the court to weigh and balance a number of specific factors. In this case, transfer was not warranted where the equipment, documents and witnesses relating to the suit were in Connecticut, and travel to Kentucky would cause financial hardship to lessee, a small corporation employing only twelve people.

At the same time, however, the court held that a Kentucky choice of law provision did apply so as to warrant the dismissal of the CUTPA claim. The court, sitting in diversity, applied the conflict of laws principles of the forum state. Under Connecticut conflict law, a contractual choice of law provision is enforceable as long as the chosen state has a substantial interest in the matter, and the fundamental policies of a state with a greater



interest would not be violated by the application of the chosen state's law. Thus, even though a large portion of the underlying facts took place in Connecticut, the lessor's home office and principle place of business were located in Kentucky, lessor's acceptance of the lease agreement took place in Kentucky, and the lessee could pursue a similar claim under Kentucky law.

The court then held that, despite a provision in the contract limiting the damages to replacement or repair, the lessee could seek damages for loss of equipment use and loss of sales on its breach of contract claim. This is because, under Kentucky law, the purpose of a limited exclusive remedy fails and is thus avoided whenever the seller fails to correct the defect within a reasonable period. Finally, the court held that a provision in the lease in which the lessee agreed to hold the assignee harmless precluded the lessee's claim against the assignee. According to Kentucky law, such a provision is enforceable by an assignee who takes the assignment for value, in good faith, and without notice of a claim or defense.

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