

MARKS & WEINBERG, P.C.

Bell & Howell Financial Services Co. v. The St. Louis Pre-Sort, Inc. 1999 WL 965961 (N.D. Ill., 2000)

St. Louis Pre-Sort (öLesseeö) obtained property from Bell & Howell Mail Processing Systems Co. (öMPSö) which was financed through Bell & Howell Financial Services Company (öFunderö). When Funder sued Lessee for nonpayment, Lessee filed a third party complaint against MPS alleging, *inter alia*, fraud. The third party suit was dismissed with respect to the fraud count for failure to plead fraud with sufficient particularity. The Court noted that fraud in the inducement is a form of common-law fraud and rejected MPS's claim that the more rigorous pleading requirements stemming from Section 10(b) of the Securities Exchange Act should be applied. Under the common law claim, Lessee needed to show:

1. A false statement of material fact,
2. That MPS either knew or believed a statement to be false, or made the statement without knowledge of its true or falsity,
3. An intent to induce the other party to act,
4. Reasonable reliance by the acting party, and
5. Damage resulting from such reliance.

Oral representations that the equipment would meet certain requirements and that there certain certifications had already been obtained were held to be material. There were also



reasonable facts from which to infer that MPS knew the statements to be false. In addition, statements misleading Lessee and preventing it from understanding that Lessee would be the first party to test the product in the field were held to be sufficient for fraud claims.

The Court also held the "election of remedies doctrine" and its procedure and substantive elements. The substantive purpose of the doctrine is to prevent a party suing for fraud from obtaining a double recovery. The doctrine allows plaintiff to, upon discovery of the fraud, to elect between one of two remedies: (1) either rescind the sale and recover whatever of value plaintiff had parted with, or (2) to keep the property and recover the damages occasioned plaintiff by the fraud. The Court noted that as a procedural matter the doctrine had been used to prevent parties from pleading inconsistent theories of relief. However, in this situation the procedural application had been "viscerated by the permissive rules of pleading by the [Federal Rule of Civil Procedure 8(a) and 8(e)(2)]." The Court noted that the Federal rules of pleading would allow Lessee to pursue claims for damages, and rescission as initial matter, but in the end the common law state rule would apply to insure that duplicative remedies were not awarded

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