

MARKS & WEINBERG, P.C.

Chris Albritton Construction Company v. Pitney Bowes Inc.

2002 WL 2008200 (5th Cir., Mississippi, 2002)

The insurance provision in the lease required the lessee to maintain insurance naming the lessor as loss payee. It also required the lessee to provide evidence of insurance and stated "if Lessee fail[s] to provide such evidence, [Lessor] will have the right, but no obligation to include the Equipment under [Lessor's] own risk management program . . . and to charge [Lessee] a fee."

The lessee never provided the lessor with proof of insurance the lessor began adding an insurance fee on each invoice. It labeled the fee a "ValueMAX" charge and made a small profit. The lessee sued the lessor for breach of contract, fraud and misrepresentation. The lessee argued that the lessor was required to *request* proof of insurance *prior* to billing the lessee for its failure to provide such proof and that the lessor hid the insurance fee by mislabeling it in order to boost its fees. The lessor did not dispute its obligation to request proof of insurance prior to charging a risk management fee but argued that it systematically mailed, and that the lessee had received one or more, computer generated letters requesting proof of insurance.

The Court quickly dismissed the fraud and misrepresentation claims. It stated that "[a] breach of a promise of future action is not fraud unless it is made with the present intent not to perform." In addition, the court did not feel that the term ValueMAX operated to



conceal the nature of the charge, especially since the charge was not buried amongst a long list of other charges and there was a toll free number that the lessee could have used if it had any questions about the bill. In fact, the Court determined that none of the facts suggested by the lessee amount to any omission, affirmative concealment or misrepresentation of fact that would later turn out to be untrue.

The court also dismissed the breach of contract claim pursuant to the "voluntary payment doctrine." According to the Court, "a voluntary payment is a payment made, without compulsion or fraud, and without any mistake of fact, of a demand which the payor does not owe, and which is not enforceable against him, instead of invoking the remedy or defense which the law affords against such demand." The lessee had no claim against the lessor and could not recover the payments already made since it paid the ValueMAX fees notwithstanding that: (1) it was aware the risk management fee and when it was owed (it had imputed knowledge of the terms of the lease); and (2) the ValueMAX fee was clearly delineated in the invoice with an explanation of the fee and a toll-free number for questions.

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.

