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Cobra Capital v. RF Nitro Communications, Inc. No. 266 F. Supp.2d 432 (M.D.N.C. Mar. 17, 2003)

Cobra Capital, LLC ("Cobra") brought actions against RF Nitro Communications, Inc. ("RF Nitro") for breach of contract and tortious interference with contract. Cobra and RF Micro (a predecessor to RF Nitro) had been in negotiations for an equipment lease, which resulted in the execution of a "Lease Financing Proposal" between the parties. The Lease Financing Proposal expressly stated that "Cobra is pleased to propose lease financing," and that the proposal was "subject to the approval of COBRA and is not considered to be a commitment." A subsequent letter from Cobra outlined fourteen separate actions that had to be performed before the lease could be finalized and consummated, including the execution of various documents and the presentation of proper proof of insurance.

Before any additional progress was made, RF Nitro acquired the stock of RF Micro. RF Nitro informed Cobra of its election not to proceed with the transaction and Cobra brought claims for breach of contract and tortious interference with contract. The court found that neither party intended to create a binding contract through the Lease Financing Proposal, and dismissed Cobra's claims. In particular, the Court relied heavily on language in the Proposal which stated that it was not a commitment. The Court also specifically rejected Cobra's claim that the fourteen acts required for consummation of the transaction were "ministerial" in nature and that the transaction was therefore substantially completed.



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