

MARKS & WEINBERG, P.C.

Cooper v. Lyon Financial Services

65 SW 3d 197, Court of Appeals of Texas (January 10, 2002)

Although the Court did not always use the best rationale, it reached the proper conclusions and this provides a nice example of a UCC "Finance Lease" in action. A physician named Bruce Cooper ("Cooper") went to a seminar about a laser manufactured for use in cosmetic surgery. Shortly after the seminar, a sales person from the manufacturer contacted Cooper and talked him into acquiring the laser.

Cooper decided to lease the laser from a third party financier named Lyon Financial Services ("Lyon") pursuant to a lease with a fair market value purchase option. Cooper did not train properly for the use of the laser and, after several unsuccessful trials, decided that he wanted to return the laser. He also stopped paying rent to Lyon under the lease. Lyon repossessed the laser and, after proper legal notice, sold it pursuant to a commercially reasonable sale. Lyon then sued Cooper for breach of the lease, seeking the amount still owed under the lease and attorneys' fees. Cooper responded with several claims, including fraud, misrepresentation, failure of consideration, failure to mitigate damages, usury, violations of the state's deceptive trade practices act, breach of express and implied warranties, unconscionability and revocation of acceptance. These claims were based upon alleged misrepresentations made by the sales person as well as certain provisions in Lyon's lease form.



When all the dust settled, Lyon was awarded damages owed under the lease as well as attorney's fees. Cooper received nothing. The Court began by properly noting this lease to be a special kind of true lease known as a "finance lease" under Article 2A of the Uniform Commercial Code (the "UCC") since: (1) Lyon did not select, manufacture or supply the laser; (2) Lyon acquired the laser in connection with the lease; and (3) Cooper's approval of the contract between Lyon and the manufacturer of the laser was a condition precedent to the effectiveness of the lease. The Court dismissed Cooper's claim that he revoked acceptance of the laser since Cooper failed to revoke acceptance in accordance with the UCC requirements relating to finance leases. Unfortunately, the Court failed to mention other important statutory protections that the UCC finance lease provisions grant to finance lessors--such as the automatic hell and high water clause.

Cooper's usury claim was also dismissed. At the time, the term "usury" was defined under Texas law as "interest in excess of the amount allowed by law." The term "interest" was defined as "the compensation allowed by law for the use or forbearance or detention of money." Cooper claimed that charges for property tax and damage insurance constituted charges for the use of money and that when those amounts were added to other "interest" charged under the lease, the total interest exceeded the amount allowed under state law. The Court dismissed the claim by noting that: (1) the charges for property tax and damage insurance were for those purposes only and not for the use of the money; and that (2) once those charges were removed from the computation of total "interest", there was no usury violation. The Court should have also based its holding on the fact that the underlying transaction was a lease and that charges were for the use of the equipment and not for the use of money. As such, there is not any principal or interest and usury laws were inapplicable.

The Court also dismissed the unconscionability claim that Cooper brought under the state's deceptive trade practices act, noting that Cooper was sufficiently sophisticated and that Lyon did not take advantage of Cooper's lack of knowledge in such a manner "that



the resulting unfairness was glaringly noticeable, flagrant, complete and unmitigated." However, the Court improperly analyzed Cooper's claim that lease was unconscionable on its face. That portion of the unconscionability claim was based on a prior case called *Tri-Continental Leasing Corp. v. Law Office of Richard W. Burns* which held that: (1) a copy machine was so defective that it failed to perform its intended function; and (2) in effect, the provisions in the lease agreement were unconscionable since they disclaimed all warranties and stated that the lessor made no representations. 710 S.W.2d 604 (Tex. App. 1995). Rather than attacking the holding in *Tri-Continental*, the Court distinguished Cooper's case from *Tri-Continental* by noting that: (1) Lyon's lease disclaimed certain warranties but did not specifically state that Lyon made no representation; and (2) the laser functioned properly. As a result, lease disclaimers commonly used throughout the industry may still be subject to unconscionability claims in Texas.

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