

# MARKS & WEINBERG, P.C.

## De Lage Landen Financial Services v. TriTec Office Equipment 2001 WL 33521 (E. D. Pa. 2001)

This case provides some indication of how broker-funder agreements may be interpreted, a federal district court held the originator of a fraudulent lease obligated to repurchase the transaction from the funder/lessor.

De Lage Landen Financial Services (formerly, Tokai) entered into a contract with TriTec Office Equipment, an equipment vendor. (Although the originator in this case was a vendor, rather than the broker, it is very likely that the same rules will apply as the documentation appears to have been identical to many broker-funder agreements). The agreement included a representation by TriTec that leases would be "executed by an authorized signatory and the signature is (sic) genuine in all respects."

In 1999, TriTec originated two leases which Tokai financed (it is not clear whether these were brokered or assigned transactions) and the signatures proved to have been unauthorized or forged.

Tokai sued TriTec, which defaulted and later asked the court to reopen the lawsuit. In its motion, TriTec used three defenses common to brokers attempting to avoid liability for breach of representation:



1. First, TriTec argued that it did not intentionally misrepresent any facts and was unaware of the fraud. The court said "whether or not the misrepresentation and breach were intentional is irrelevant to a claim of breach of contract."
2. TriTec's second defense was that the criminal activity of the signatory was what actually caused the loss and should not be TriTec's responsibility. Again, the court was unimpressed and said "[Tokai] was entitled to rely on TriTec's assertions under the contract that the signatories were authorized representatives of [the lessee]."
3. Finally, TriTech claimed "unconscionability". The court described the unconscionability defense as follows, "Contract clauses are considered unconscionable where an absence of meaningful choice on the part of one party to the contract is paired with contract terms that are unreasonably favorable to the other party." Once again, the court upheld the contract, stating "TriTec is a sophisticated corporation doing business as a vendor of office equipment and it freely entered into the contract with Tokai."

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