

MARKS & WEINBERG, P.C.

Fairbrook Leasing, Inc. v. Mesaba Aviation, Inc.

408 F. 3d 460 (8th Cir. 2005)

Fairbrook Leasing, Inc. ("FLI") brought a declaratory judgment action against Mesaba Aviation ("Mesaba") to bind Mesaba to a contract that required Mesaba to execute long-term aircraft leases with FLI. Mesaba and FLI executed a Term Sheet Proposal (Term Sheet) that contemplated long-term subleases of twenty used aircraft and the purchase of twelve new aircraft from FLI. As negotiations between the parties regarding the final documents continued during the next two years, Mesaba accepted delivery of aircraft from FLI on short-term leases of 2-3 months as opposed to the long-term leases of 72-96 months specified in the Term Sheet.

After nearly five years of leasing from FLI, Mesaba decided to return some of the aircraft to FLI arguing that it was bound only by the short-term leases and not the long-term leases stipulated in the Term Sheet. FLI protested the return of the aircraft and brought this action to enforce the terms of the Term Sheet under New York law.

New York law recognizes two types of binding preliminary agreements, Type I and Type II. Type I arises when both parties agree on "all the points that require negotiation." Type I is preliminary only as to form and the parties have the right to demand performance of the transaction. Type II "establishes a framework for agreement, and binds the parties to negotiate in good faith within that framework." Once the parties



make a "good faith effort to close the deal and have not insisted on conditions that do not conform to the preliminary writing," they may walk away freely. The court determined that the parties in this case entered into a Type II agreement and intended to be bound by the proposal based on the following five factors: (1) the language of the agreement; (2) the existence of open terms; (3) whether there has been partial performance; (4) whether the agreement is of the type usually committed to writing; and (5) the context of the negotiations resulting in the preliminary agreement.

The dissenting judge in this case held that FLI does not have the right to enforce the Term Sheet Proposal as a binding contract between the parties because a breach by Mesaba would not bind the parties to the contractual objective of the Term Sheet. In his opinion, the judge reiterated that a court should rarely find a contractual obligation in a preliminary agreement, unless the agreement "clearly manifests" such an intention. The judge argued, "if a final contract is not agreed upon, the parties may abandon the transaction as long as they have made a good faith effort to close the deal and have not insisted on conditions that do not conform to the preliminary writing." In other words, FLI cannot enforce the Term Sheet as a contract because the agreement lacks the detail and specificity of an aircraft lease and the parties never reached such an agreement. If the parties negotiated in good faith, they may walk away from the deal freely.

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