

MARKS & WEINBERG, P.C.

Frankenmuth Mutual Ins. Co. v. Escambia County, Florida

289 F. 3d 723 (11th Cir. 2002), April 24, 2002

Frakenmuth Mutual Insurance Co., the lessor as successor in interest ("Lessor"), leased computer equipment to Escambia County, Florida (öLesseeö). The lease contained two provisions that are commonly used in leases to state entities. First, the lease contained a non-appropriation clause which provided that the agreement would terminate in any given year if the legislative body or funding authority failed to appropriate the funds necessary to make the lease payments. This type of clause is designed in ensure that the lease is not considered "debt" for state law purposes. Second, the lease provided that in the event the county refused to appropriate the requisite funds, it would not rent any substitute equipment for the balance of the specific period (a "non-substitution clause").

Lessee subsequently decided that the computer equipment was outdated and informed Lessor that it was rejecting the lease, arguing that it was void and unenforceable for two reasons. First, the non-substitution clause was unconstitutional and, because it could not be severed from the lease, the entire lease was therefore invalid. Second, the county comptroller did not have the authority to enter into the agreement on behalf of Lessee without Lessee's approval. Lessor brought an action seeking a declaration that the lease was valid and enforceable and prohibiting Lessee from breaching the agreement.



The Court agreed that the non-substitution clause was unconstitutional but held that the clause could be severed from the remainder of the contract and that Lessor could therefore enforce the lease without the non-substitution clause. The Court based its holding on the fact that the lease contained a severability provision and the fact that the non-substitution clause did not go to the essence of the contract.

The Court also disagreed with Lessee's contention that the county comptroller's lack of authority rendered the lease invalid, holding that Lessee ratified the agreement. Following the Florida Supreme Court's three-part test to determine whether a county has ratified an agreement, the court found that (1) Lessee had the authority to enter into the agreement; (2) Lessee had informally or implicitly adopted the lease agreement through public meetings in the same manner in which an agreement would have been initially approved; and (3) Lessee was aware of the material terms of the lease as evidenced by its approval of the costs budgeted for the equipment and knowledge of the acquisition of a new computer system to be integrated into Lessee's system.

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