

MARKS & WEINBERG, P.C.

GMAC Commercial Mortgage Corp. v. Maitland Hotel Assocs

2002 WL 596216, M.D. Fla. (Apr. 3, 2002)

GMAC Commercial Mortgage Corporation ("GMAC") leased approximately \$1.2 million in furniture, fixtures and equipment to Maitland Hotel Associates, Ltd. ("Lessee") pursuant to a lease forty-eight month lease where the rental payments were to be determined at the time of closing "based upon the aggregate cost of the equipment and [an interest] rate based on corresponding 4-year Treasury on the date of the final disbursement under the lease agreement plus 550 basis points." When Lessee defaulted in multiple payments, GMAC brought this suit to recover the unpaid rent and late fees chargeable on such amounts. The late fee provision in the lease, which was governed by Georgia law, obligated Lessee to pay a late fee of five percent of each delinquent payment plus interest at a rate of one and one-half percent per month. Without determining whether the "lease" in question constituted a "true lease" or a condition sale or other type of lease-intended-as-security (i.e. a "loan"), the Court analyzed the usury law in Georgia to see if the late fee and interest provisions in the lease violated the State's statutory laws against charging too much interest on loans.

Section 7-4-18 of the Georgia Code contains a criminal usury statute which provides that no loan shall charge any rate of interest greater than five percent per month either directly or indirectly, by way of commission for advances, discount, exchange or by any contract, contrivance or devise whatsoever. In the event any loan violates this criminal usury statute, the lender forfeits all interest due on the loan but will still be able to collect the principal.



However, the effect of that criminal usury statute has been somewhat blurred by §7-4-2(a)(1)(A) of the Georgia Code which states that the legal rate of interest of seven percent applies where a rate percentage is not established by written contract *but that* parties to a loan of *more than \$3,000 dollars but less than \$250,000* are allowed to establish any rate of interest in their contract subject to the criminal usury laws. This language calls into question whether the criminal usury statute applies to loans that are greater than \$250,000. The Court noted that, in at least one case, a Georgia court has applied the criminal usury statute to a loan exceeding \$250,000 but that a different Georgia court held, without analysis, that Georgia's usury provision did not apply to a loan that was in the amount of \$2.3 million. This issue could have been critical in the case at bar since the combination of the five percent "charge for the delinquent payment" and the one and one-half percent late fee would have violated the criminal usury cap of five percent.

GMAC originally sought to recoup both charges but waived its claim to the one and one-half percent monthly charge at an evidentiary hearing held by the Court. As such, the Court held that it need not decide whether the late charges and interest sought are subject to the criminal usury statute.

Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit leaselawyer.com or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

