

# MARKS & WEINBERG, P.C.

## **Gen. Elec. Capital Corp. v. McKiever** 1999 WL 96029 (Ark. App. 1999).

McKiever stopped making payments to GECC when he discovered that the equipment was unfit for its intended purpose. GE Capital sued and McKiever answered with the affirmative defense of unconscionability.

The court agreed with McKiever and found that the lease was unconscionable because the warranty disclaimers were not conspicuous enough to ensure that McKiever knew of the warranty limitations. The court pointed out that the warranty disclaimers were in the body of the lease agreement and were the same size and color as the other lease provisions.

The court also found that there was unequal bargaining power between the parties. Even though McKiever never read the entire lease, there was no lease provision that disclosed the agency relationship between GE Capital and Computer Assistance and McKiever was never told about it. Furthermore, even though McKiever had a continuing obligation to make payments for the computer, the pre-printed lease placed all risk of loss on him.



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