

# MARKS & WEINBERG, P.C.

## Mercedes-Benz Credit Corp. v. Johnson

110 Cal. App. 4th 53, 1 Cal. Rptr. 3d 396, 51 UCC Rep.Serv.2d 168

(Cal. Ct. App. 2003)

An affiliate of Mercedes-Benz Credit Corporation's named Calabasas Motor Cars ("Lessor") leased a car to Hassan Marzban ("Lessee"). Although the terms of the lease only permitted lessee to use the car, Lessee immediately sold it at his used car dealership to Terry Johnson ("Purchaser"). Lessee then stopped making payments on the car. Lessor filed a claim for breach of contract against Lessee and Purchaser, and alleged a superior interest in the vehicle.

Purchaser disputed this claim under §2A-305(b) of the Uniform Commercial Code which states: "[a] buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods *were entrusted* by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract." Purchaser argued that this provision resulted in him having title to the car free and clear of any interest held by Lessor since he purchased it from a licensed used car dealer in the ordinary course of business.

Section 2A-305 provides a lessee who is a merchant dealing in goods of that kind with the ability to convey greater rights than the lessee has under the lease. As stated by one



well-respected commentator: "if an owner leases goods to a dealer and the dealer is in the business of dealing in such goods both new and used, a sale by the dealer to a buyer in the ordinary course of business will cut off the owner's rights, and a lease to a lessee in the ordinary course of business will cut off the owner's rights to the extent of the lease." *See* Hawkland, Uniform Commercial Code Series, §2A-305:02.

In this particular case, the Court analyzed the term "entrusting" and held the Lessor's leasing of goods to Lessee did not constitute the type of entrustment that would allow Lessee to pass clean title to Purchaser under §2A-305. However, anyone wishing to rely on this analysis should carefully review the UCC law in the applicable state since this case turns on a non-uniform definition of "entrustment" found in California's version of the UCC. Basically, the California legislature had added language to the standard UCC definition of "entrustment" found in §2-403(3) so that delivery must have been provided to the merchant "for the purpose of sale, obtaining offers to purchase, locating a buyer, or the like." Jurisdictions following the uniform version of the UCC do not contain this additional language and define "entrustment" much more broadly.

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