

MARKS & WEINBERG, P.C.

Newcourt Financial USA, Inc. v. D&G Medical Systems P.L.L.C., 2000 WL 528476 (N.D.Ill.)

D&G Medical Systems (D&G) and Incon Care Group, Inc. (Incon) entered into a contract whereby D&G was to provide Incon with physician services to incontinence clinics in parts of Tennessee. Soon thereafter, Incon and D&G entered into a contract in which D&G was to lease an incontinence therapy machine to Incon for sixty months. The lease was to be financed pursuant to a lease between Newcourt Financial USA, Inc. (Newcourt) and D&G was to release the machines to Incon at a higher rate.

Numerous documents were signed and, at the end of the day, the Master Lease was between Newcourt and D&G but listed Incom's address. The arrangement between Incom and D&G required Incom to make all payments directly to Newcourt. Newcourt only received two payments from D&G on the Master Lease of the machine. Section 12(i) of the Master Lease provides that a failure to pay any installment of rent when due is considered an event of default.

D&G put forth two arguments as to why it should be entitled to summary judgment. First, D&G argues that there was no offer and acceptance of the contract because there was no direct communication between D&G and Newcourt. The Master Lease itself made it clear in a statement right above the signature line that the person signing the contract created a valid and binding obligation of Lessee and that he has authority to



make such execution for and on behalf of Lessee.ö Therefore, the lease constituted a valid offer, and D&G's signature was a valid acceptance, regardless of the amount of communication between the two parties.

D&G's second argument is that since Newcourt never signed the contract, the contract was never officially executed. Under Illinois law, the signature of the party not being charged is not necessary if the contract is delivered to that party and he indicates acceptance by performance. Additionally, Newcourt could waive the requirement that it sign and execute the document since it was made for Newcourt's benefit.

Therefore, the Court held that a valid contract existed between D&G and Newcourt, and denied D&G's motion for summary judgment.

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.

