

# MARKS & WEINBERG, P.C.

## **Sauer v. Xerox Corp. 17 F. Supp. 2d 193 (W.D. NY 1998)**

Having already made five substantive determinations concerning the merits of the plaintiff's claims, the court decided to quickly clear this case from its docket. It did so by granting summary judgment in favor of the defendant on all the plaintiff's claims. Pending against the defendant were two breach of contract claims and four claims for fraud. The defendant had asserted six counterclaims against the plaintiff. At the heart of the parties' dispute was a sale-leaseback agreement for equipment called a "photo receptor line." Under the agreement, the defendant, the seller/lessee, had the right to renew for two additional periods and then to purchase back the leased equipment. The rent for the renewal periods and the repurchase price were to be determined in accordance with an appraisal procedure set forth in the lease agreement. Should that procedure have failed to provide figures satisfactory to each party, the agreement provided that an independent appraiser selected by the AAA was to be retained.

Noting that the plaintiff/lessor had not adhered to the notice and opportunity to cure provisions of the lease agreement, and that no "Event of Default," as defined by the agreement, had occurred, the court found plaintiff to be precluded from seeking any remedies under the contract.



As for the plaintiff's fraud claims, the court found that they, and, indeed, all the claims were the product of the plaintiff's dissatisfaction with the results of the appraisal process. Dismissing the case with prejudice, the court sent a message to parties to lease agreements: try to resolve disputes according to the provisions of the agreement before expending the court's resources.

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