

MARKS & WEINBERG, P.C.

Sony Fin. Serv. v. Multi Video Group

No. 03 Civ.1730 LAK GWG, 2005 WL 91310 (S.D.N.Y Jan. 18, 2005)

In this case, lessor's hell and high-water structure survived an attack from software laws and business models surrounding beta test sites and evaluation licenses.

Multi Video is in the business of video and film post productions. Sony Electronics approached Multi Video about purchasing state-of-the-art video equipment. The equipment was still in the developmental stage, and Sony expressed to Multi Video that it would like Multi Video to be a "beta test site" for the product. This entailed Multi Video taking the equipment on somewhat of a trial basis and not being bound to keep the equipment until it gave its final approval in a written Delivery and Acceptance Certificate. This arrangement allowed both parties to determine what, if any, improvements needed to be made to the equipment. Multi Video entered into a System Sale Agreement with Sony Electronics for the equipment. Multi Video had the option to seek other financing resources, but it chose to use Sony Financial to finance a lease of the equipment. Multi Video would have the option to purchase at the end of the lease period. The equipment was delivered and, on two separate occasions following delivery, Multi Video signed confirmations that the delivery had been complete and the equipment had been inspected and was satisfactory. Shortly thereafter, Multi Video began experiencing performance problems with the equipment. Sony was unable to fix the problem. Multi Video ceased payments to Sony Financial on the lease. Multi Video then brought a



breach of contract action against Sony Electronics. Sony Financial filed a claim for breach of lease agreement against Multi Video. These actions were consolidated for pretrial purposes. Sony Electronics and Sony Financial both moved for summary judgments.

Multi Video contended that there was a Beta Test Site Agreement that trumped the System Sale Agreement. Multi Video argued that it was only taking the equipment on a trial basis and that if it was not satisfied with the equipment at some point, it was not bound by the System Sale Agreement. Oral representations from Sony Electronics representatives did indicate that such an arrangement was considered, but there was no written, signed agreement between the parties articulating such an arrangement. The System Sale Agreement contained merger and integration clauses barring the agreement from being modified orally and discounting any previous agreements. Therefore, the court determined, when Multi Video signed the Delivery and Acceptance Certificates, it acknowledged that the equipment had been inspected and was satisfactory. That was the extent of the obligations of Sony Electronic under the System Sale Agreement, thus there was no breach of contract and Sony Electronics' motion for a summary judgment was granted.

Similarly, Multi Video felt it was not obligated to continue to make lease payments because Sony Electronic had breached the overall Beta Test Site Agreement to make sure the equipment was in working order. Since there was no real proof that any such firm agreement existed between the parties, this argument failed as well. Further, the Lease contained a clause specifying that any breach by the vendor (Sony Electronics) did not affect Multi Video's obligation to pay on the Lease to Sony Financial. The two Sony entities were designated as entirely separate for the purpose of the lease, and any actions by Sony Electronic were stipulated as having no effect on Multi Video's obligation to pay. Multi Video was found to be in breach of the lease and Sony Financial's motion for a summary judgment was granted. Sony Financial was granted a judgment for



\$2,936,887, which included missed payments and prejudgment interest under New York state law.

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.

