

MARKS & WEINBERG, P.C.

Wells Fargo Bank Northwest v. TACA Int'l Airlines

247 F. Supp. 2d 352 (S.D.N.Y. 2002)

Lease management provider, C-S Aviation Services (the "Lessor's Negotiator") negotiated and managed the lease of five aircraft between TACA International Airlines ("Lessee") and Wells Fargo Bank Northwest ("Lessor"). The lease agreements contained a standard "hell or high water" provision and a typical disclaimer of representation and warranties. After the agreements were executed, Lessee discovered that the actual cost to operate the aircraft exceeded the estimates provided by the Lessor's Negotiator during negotiations. The parties tried to resolve the dispute by "working together" to find another airline to assume the obligations of Lessee. When attempts to find a substitute lessee failed, Lessee stopped using the aircraft and ceased its monthly payments under the lease agreements.

Wells Fargo sued for the rent due under the Leases. Lessee in turn claimed to have been fraudulently induced to enter the Leases, counterclaimed and brought a third-party action against the Lessor's Negotiator for damages incurred as a result of the fraud. According to Lessee, the false estimates and representations made by Lessor's Negotiator had a large impact on the profitability of the aircraft and were therefore critical to its decision to enter the leases. Lessee further claimed that its counterclaims should operate as both defenses and set-offs against its rent obligations.

As usual, Lessor sought to win the battle by relying on its trusty "hell or high water provision", arguing that the provision required rent be paid regardless of any defenses or set-



offs and that it was unambiguous and not contradicted by other provisions within the Leases. Lessee argued that the fact that it was fraudulently induced to enter the lease rendered the hell and high water provision inapplicable-- quite simply that the lease was never a binding and enforceable obligation.

This time, the court, applying New York law held that "[i]t is well-established, however, that a party to a contract cannot rely on oral representations where a contract specifically disavows the incorporation of non-written representations [and that when a] party to a contract specifically disclaims reliance upon a representation in a contract, that party cannot ... [later] assert that it was fraudulently induced into signing the contract by the very representation it has disclaimed." The court noted that the disclaimer provision in the lease was sufficiently broad and specific that no explicit mention of "maintenance costs" was required in the disclaimer for it to effectively operate as a disclaimer with respect to representations about maintenance.

As a side note, the Court also rejected Lessee's contention that because the Lessor's Negotiator was not a signatory on the Leases, they were not entitled to benefit from them noting that Lessee's earlier assertion in its counterclaims that the Lessor's Negotiator was an agent of Lessor precluded Lessee from arguing that the disclaimer did not also protect Lessor's Negotiator.

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