Supreme Court, Appellate Division, First Department, New York.

CANON FINANCIAL SERVICES, INC.,
Plaintiff-Respondent,
v.
MEDICO STATIONERY SERVICE, INC., et al.,
Defendants-Appellants,
Canon U.S.A., Inc., et al., Additional Counterclaim Defendants.

Dec. 10, 2002.

Lessor brought action against lessee and guarantor for breach of an equipment lease for a copying machine. The Supreme Court, New York County, Harold Tompkins, J., granted summary judgment in favor of lessor, and defendants appealed. The Supreme Court, Appellate Division, held that: (1) lessor established its entitlement to judgment as a matter of law; (2) no basis existed for piercing corporate veil; and (3) ten-day period under lease for defendants to give written notice of rejection was not unreasonable.

Affirmed.

West Headnotes

[1] Judgment 185.3(1)
228k185.3(1) Most Cited Cases

On motion for summary judgment in action for breach of an equipment lease for a copying machine, lessor established its entitlement to judgment as a matter of law by submitting proof of nonpayment and finance lease agreement providing that lessee and guarantor would look solely to copier's supplier, dealer, or manufacturer if copier was unsatisfactory.

[2] Corporations 1.6(2)
101k1.6(2) Most Cited Cases

No basis existed for piercing corporate veil in copying machine lessor's action against lessee and guarantor for breach of lease agreement, which provided that any warranties made by copier's supplier, dealer, or manufacturer were not part of lease agreement, even though lessor and supplier were wholly owned subsidiaries of manufacturer.

[3] Bailment 5
50k5 Most Cited Cases

Ten-day period, measured from delivery, that lessee of copying machine and its guarantor had under equipment lease to give written notice of rejection was not unreasonable, although they complained about copier virtually from time of its delivery, where they continued to use it for some eight months before giving clear notice of rejection, clearly more time than was reasonably needed to decide whether they wanted to keep it despite its alleged defects. McKinney's Uniform Commercial Code §§ 2-A-407, 2-A-509(2), 2-A- 515(1)(b).
****195** Robert S. Cohen, for Plaintiff-Respondent.

Mark L. Rosenfeld, for Defendants-Appellants.

Before ANDRIAS, J.P., SAXE, ROSENBERGER, LERNER and FRIEDMAN, JJ.

***66** Order, Supreme Court, New York County (Harold Tompkins, J.), entered January 30, 2002, which, in an action for breach of an equipment lease for a copying machine, granted plaintiff lessor's motion for summary judgment against defendants lessee and guarantor, severed plaintiff's claim for attorneys' fees, and severed defendants' counterclaims against additional defendants manufacturer and supplier of the equipment, unanimously affirmed, with costs.

[1][2][3] Plaintiff's motion for summary judgment was properly granted upon proof of nonpayment and in view of the subject agreement's provisions that plaintiff made no representations or warranties of any kind with respect to the copier, that ***67** plaintiff was not the supplier, dealer or manufacturer of the copier, that any warranties made by the supplier, dealer or manufacturer were not part of the subject agreement, and that defendants would look solely to the supplier, dealer or manufacturer, and would continue to make the payments due under the lease, even if the copier was for any reason unsatisfactory. These provisions are typical of a finance lease as defined in UCC 2-A-103(g) (*see* UCC 2-A-103[g], Official Comment, McKinney's Cons. Laws of N.Y., Book 62 1/ 2), and indeed the subject agreement states that it was intended as such. It does not avail defendants that plaintiff and the copier's supplier are wholly owned subsidiaries of the manufacturer (*see id.* at 324), and no basis exists for piercing these affiliates' corporate veils. Nor does it avail defendants to argue that the 10-day period, measured from delivery, that they had under the lease to give written notice of rejection and thereby avoid the "hell or high water" clause (UCC 2-A-407) was unreasonable. Despite their many complaints about the copier virtually from the time of its delivery, defendants continued to use it for some eight months before giving clear notice that it wanted it removed from its premises, clearly more time than was reasonably needed to decide whether they wanted to keep it despite its alleged defects (UCC 2-A-515[1][b]; 2-A-509[2]).

(Cite as: 300 A.D.2d 66, 751 N.Y.S.2d 194)

751 N.Y.S.2d 194, 300 A.D.2d 66, 49 UCC Rep.Serv.2d 824, 2002 N.Y. Slip Op. 09104

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