

UCC TIP OF THE MONTH – What About Equipment Leases?

August 15, 2013

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How Article 2 Impacts Leases of Goods

While it may be commonly known that Article 2 of the Uniform Commercial Code (“UCC”) applies to the sale of goods, Article 3 applies to negotiable instruments and that Article 9 applies to secured transactions, often overlooked is that Article 2, specifically Article 2A, also applies to *leases* of goods.

Specifically, § 2A-102 applies to any transaction, regardless of its form, that creates a lease of goods. The code defines such a lease to include: “a transfer of the right to possession and use of goods for a term in return for consideration” but something short of an actual sale the goods. Common leases covered by the code are “consumer leases” and “finance leases.”

A consumer lease involves a lease of goods to an individual, valued less than \$25,000, that are intended for personal, family or household purposes. A “finance lease” is a device commonly used by businesses in need of equipment. Under a finance lease the lessor does not select, manufacture or supply the equipment or goods. Rather, the lessor acquires the equipment and finances the acquisition costs under a lease to the end user.

Essentially, the lessor in a finance lease is in the position of a bank making a secured loan. It is important to know that a finance lease will be governed by the UCC rather than by state common law governing contracts. In addition, Article 2A leases may also be subject to various state statutes, such as the Mobile Home Commission Act, the Michigan Vehicle Code and/or the Michigan Consumer Protection Act. And depending upon the size of the lease, the statute of frauds may mandate a signed writing to evidence the lease.

Too often clients only come to realize the importance of the UCC after problems arise in a sale or lease transaction. When fingers are being pointed and claims of “breach” enter the conversation, it may be too late to protect your interests, particularly when an understanding of the governing law is only then coming into focus.

UCC TIP OF THE MONTH – WHAT ABOUT EQUIPMENT LEASES? Cont.

Plunkett Cooney's attorneys can help you plan and hopefully minimize your risks when acquiring leased equipment. If the dispute already exists, they can help you avoid liability by aggressively defending your case if litigation does arise.

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