CALIFORNIA COURT OF APPEAL, FIRST DISTRICT, DIVISION FOUR

CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.

115 Cal. App. 4th 537, 8 Cal. Rptr. 3d 927 (Cal. Ct. App. 2004) · No. A102151 · Decided January 30, 2004

SUMMARY

The California Court of Appeal affirmed a right to attach order issued in favor of CIT Group after Super DVD defaulted on a commercial equipment lease. The court held that the lease provided a sufficiently clear and definite basis for calculating damages under California Code of Civil Procedure section 483.010, even though the ultimate amount was not stated on the face of the contract. The court also rejected challenges concerning CIT's selected remedies, present-value calculation, and the commercial reasonableness of the equipment sale.

CASE DETAILS

COURT	California Court of Appeal, First District, Division Four
WRITING FOR THE COURT	Kay, P.J.; Reardon, J.; Rivera, J.
JURISDICTION	California
DECIDED	January 30, 2004
DOCKET	A102151
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants challenged the trial court's issuance of a Right to Attach Order in favor of CIT to secure a deficiency allegedly owed after Super DVD defaulted on commercial equipment lease obligations.
STANDARD OF REVIEW	The appellate court reviewed whether the claim fell within Code of Civil Procedure section 483.010, subdivision (a), and whether the supporting declaration established a fixed or readily ascertainable amount supporting attachment.
PRECEDENTIAL VALUE	Published California Court of Appeal opinion; precedential under California law.
PARTIES	Super DVD, Inc., Julius Liu v. CIT Group/Equipment Financing, Inc.

TOPICS

civil procedure · commercial litigation · contracts · remedies · uniform commercial code

PRACTICE AREAS

Civil procedure · Commercial litigation · Contracts · Remedies · Uniform commercial code

QUESTIONS PRESENTED

1. Whether a claim arising from a commercial equipment lease is subject to attachment under Code of Civil Procedure section 483.010, subdivision (a), when the amount of damages was not fixed at the time the contract was executed.
2. Whether the lease documents and CIT's supporting declaration provided a sufficiently clear and definite basis for calculating the amount of the claimed deficiency.
3. Whether appellants' contentions concerning the selected contractual remedy, the investment rate used to calculate present value, and the commercial reasonableness of the equipment sale undermined the Right to Attach Order.

HOLDINGS

1. A claim for damages arising from a lease of real or personal property may support attachment under Code of Civil Procedure section 483.010, subdivision (a), even if the damages are unliquidated and the precise amount was not known when the contract was formed, provided the amount is readily ascertainable by reference to the contract and a reasonable, definite basis of computation exists.
2. The master lease and lease schedules provided a clear and definite formula for calculating the damages because they specified the monthly rent and rental period; therefore, the claimed amount was sufficiently ascertainable to support the Right to Attach Order.
3. The asserted defects in CIT's supporting declaration did not require reversal because the declaration stated that CIT had accelerated the unpaid rent, and the investment rate used to calculate present value appeared in the attached exhibits.

KEY QUOTATIONS

> "*The fact that the damages are unliquidated is not determinative.*" (115 Cal. App. 4th at 539; 8 Cal. Rptr. 3d at 929)

> "*The master lease and corresponding lease schedules provide a clear and definite formula for the computation of damages, to wit: the monthly rent multiplied by the unexpired term.*" (115 Cal. App. 4th at 540; 8 Cal. Rptr. 3d at 930)

FACTUAL BACKGROUND

Super DVD entered into a master lease with CIT for business equipment and executed two lease schedules for DVD duplication machines. Super DVD defaulted on its payment obligations, and Julius Liu, who had guaranteed the lease obligations, was also an appellant. CIT calculated the accelerated unpaid rent, discounted it to present value, credited the net proceeds from sale of the equipment, and sought attachment for the resulting deficiency.

PROCEDURAL HISTORY

Super DVD entered into a master lease and two lease schedules with CIT, and Julius Liu guaranteed the obligations. After Super DVD defaulted and CIT sold the leased equipment, CIT sought a writ of attachment for the remaining deficiency. The trial court issued a Right to Attach Order in the amount of $359,416.16, and the Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Stanford Hotel Co. v. M. Schwind Co., 180 Cal. 348, 181 P. 780 (1919)
- Walker v. Phillips, 205 Cal. App. 2d 26, 22 Cal. Rptr. 727 (1962)
- Lewis v. Steifel, 98 Cal. App. 2d 648, 650, 220 P.2d 769 (1950)
- Force v. Hart, 205 Cal. 670, 673, 272 P. 583 (1928)
- Bringas v. Sullivan, 126 Cal. App. 2d 693, 273 P.2d 336 (1954)
- People v. Thurmond, 175 Cal. App. 3d 865, 874, 221 Cal. Rptr. 292 (1985)
