UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 06-10616-RGS

and

CIVIL ACTION NO. 06-10710

LEAF FINANCIAL CORPORATION

v.

PAULA CARROLL, d/b/a
CARROLL FILM PROCESSING

and

JOHN CARROLL

MEMORANDUM AND ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

January 16, 2009

STEARNS, D.J.

Plaintiff LEAF Funding, Inc. (Leaf), filed these two related actions against Paula Carroll d/b/a Carroll Film Processing and John Carroll (collectively, the Carrolls) for the alleged breach of leases of photography equipment.[1] On May 12, 2008, Leaf moved for summary judgment on the two Complaints and on the Carrolls' responsive counterclaims. The court set a hearing on the motion for August 28, 2008. Although the Carrolls filed an

[1]The cases were eventually consolidated with the class action captioned Vieau v. AGFA Corp., Civil Action No. 06-11320-RGS, and the Carrolls joined the putative class of plaintiffs. The court, upon a motion filed by other class members, removed the Carrolls as named plaintiffs after the Carrolls declined to participate in final settlement negotiations. The court also allowed the Carrolls' counsel to withdraw his appearance. The class action settlement was approved on April 30, 2008, following a fairness hearing at which no objections were voiced.

opposition to the motion on August 21, 2008, they did not appear for the argument. Accordingly, the court will decide the motion on the papers.

FACTS

The following facts, as set forth in Leaf's supporting memorandum, are undisputed. On February 12, 2002, Paula Carroll entered into a Lease Agreement with Agfa Corporation (Agfa) for the lease of photographic development equipment. Approximately seven months later, on September 1, 2002, Paula Carroll entered into a second lease with Agfa. Both leases contained the following provisions.

> 2. TERM AND RENT
>
> THIS LEASE IS A NON-CANCELLABLE NET LEASE. ALL RENT AND OTHER AMOUNTS DUE HEREUNDER SHALL BE PAYABLE UNCONDITIONALLY, WITHOUT ANY DEDUCTION, COUNTERCLAIM, SET-OFF, FURTHER NOTICE OR DEMAND, TOGETHER WITH ALL OTHER PAYMENTS DUE.

(CAPITAL LETTERS in original).

> 8. ASSIGNMENT
>
> . . . Lessor may assign or transfer this agreement and lessee waives notice of any such assignment. Lessee hereby waives any and all claims, setoffs, and defenses whatsoever against Lessor's assignee.
>
> 10. WARRANTIES
>
> LESSEE LEASES THIS EQUIPMENT "AS IS." LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF, THE EQUIPMENT, ITS MATERIAL OR ITS WORKMANSHIP. LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE . . . LESSOR IS NOT RESPONSIBLE FOR ANY REPAIRS, SERVICE OR DEFECTS IN EQUIPMENT OPERATION THEREOF.

(CAPITAL LETTERS in original). Finally, the leases contained the following integration clause.

> ENTIRE AGREEMENT. THIS AGREEMENT . . . CORRECTLY SETS FORTH THE ENTIRE AGREEMENT BETWEEN LESSOR AND LESSEE WITH RESPECT TO THE USE, POSSESSION, AND LEASE OF THE EQUIPMENT. LESSEE ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. NEITHER PARTY SHALL BE BOUND BY ANY STATEMENT NOT CONTAINED IN THIS AGREEMENT.

(CAPITAL LETTERS in original). While Paula Carroll signed the leases on behalf of Carroll Film Processing, both Carrolls executed personal guaranties of all amounts due under the leases.

On November 2, 2004, Agfa assigned all rights, title and interest under the leases to AgfaPhoto USA Corporation (AgfaPhoto). A year later, on November 30, 2005, AgfaPhoto sold Leaf all of its rights under the leases, including those secured by the Carrolls' personal guaranties.[2] Under the terms of the Purchase Agreement, Leaf did not assume any of AgfaPhoto's obligations with respect to the servicing of the leased equipment.

Shortly before Leaf purchased Agfa's rights, Carroll Film stopped making monthly payments on both leases.[3] Leaf subsequently declared the Carrolls in default and

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[2]The Carrolls' leases were sold as part of an extensive portfolio of similar leases, hence the class action.

[3]In their opposition, the Carrolls state that their last payment on the leases was made on September 26, 2005.

demanded payment. When the Carrolls refused, Leaf brought these actions seeking the monies owed.

The Counterclaims

In response to Leaf's Complaints, the Carrolls acknowledged the execution of the leases and personal guaranties. However, they asserted various affirmative defenses and counterclaims, which they claim defeat any contractual obligation on their part. The factual assertions underlying the counterclaims are as follows.

Contemporaneously with signing the Agfa leases, Paula Carroll executed an amendment entitled "Step-Up Lease," as well as a "Technical Support Service Maintenance Agreement" (Service Agreement). Under the Service Agreement, Agfa agreed to provide technical support for the leased equipment for a period of sixty months from the date of its installation. The Step-Up Lease stipulated a monthly service charge for maintenance.

According to the Carrolls, AgfaPhoto hatched a plan to increase its profits by selling the lease agreements free and clear of any service obligations. As part of the alleged scheme, AgfaPhoto unilaterally terminated all outstanding Service Agreements effective January 31, 2006, and caused Leaf to refuse to honor all subsequent service and maintenance claims. On February 21, 2006, AgfaPhoto notified Carroll Film that it had accumulated a $2755.95 credit in unexpended maintenance fees, and that $970 of that amount had been applied to the balance Carroll Film owed on the Service Agreements. The notice advised Carroll Film that it would not be refunded the $1785.95 unless it agreed in writing "that AgfaPhoto has fully satisfied any and all obligations under the service

maintenance agreement through January 31, 2006 and that you will not seek any further payment or benefit under that agreement."[4] AgfaPhoto represented that Integra Technologies International, Inc. (Integra), would assume AgfaPhoto's obligations under the Service Agreements. Integra, however, did not honor AgfaPhoto's contractual commitments. Rather, Integra assessed fees at rates more than twice the amounts agreed to by AgfaPhoto and the Carrolls. Moreover, according to the Carrolls, Integra is not qualified to service the leased equipment.

In the first of their counterclaims, the Carrolls seek a declaratory judgment that Leaf breached the leases, that it perpetrated a fraud on the Carrolls, that the leases are unconscionable and unenforceable, and that the Carrolls do not owe any monies to Leaf. The Carrolls additionally assert counterclaims for breach of contract (Count II); revocation of acceptance of goods under the Uniform Commercial Code (UCC) (Count III); breach of the implied covenant of good faith and fair dealing (count IV); breach of the implied warranties of merchantability and of fitness for a particular purpose (Counts V and VI, respectively); and violation of Mass. Gen. Laws ch. 93A (Count VII).

Leaf, for its part, seeks to recover its asserted damages.

DISCUSSION

Summary judgment is appropriate where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R.

[4]Although the court presumes that the Carrolls did not sign and return the release, they do not state what action, if any, they took in response.

Civ. P. 56(c). "'[G]enuine' means that 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party,' and a 'material fact' is one which 'might affect the outcome of the suit under the governing law.'" Buchanan v. Maine, 469 F.3d 158, 166 (1st Cir. 2006), quoting Seaboard Sur. Co. v. Town of Greenfield, 370 F.3d 215, 218-219 (1st Cir. 2004).

Because it is undisputed that Paula Carroll signed the leases and that Carroll Film failed to make the corresponding payments, Leaf is entitled to summary judgment unless the Carrolls can produce evidence supporting a valid defense or offsetting counterclaim. Leaf's position is relatively straightforward - it argues that this is a simple breach of contract case, and that the Carrolls owe a total of $250,077.64, plus interest.[5] The Carrolls, on the other hand, argue that in March of 2004, Agfa breached the first lease when it ignored repeated requests to perform preventive maintenance on the leased equipment. In addition, in July of 2005, Agfa could not or would not repair one of the machines subject to the first lease after the Carrolls experienced a severe banding problem where lines caused by density variations on photographic prints rendered prints unfit for sale. Carroll Film was unable to complete a number of orders as a result, and was eventually forced to close the store where the machine has been installed.[6]

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[5]This figure represents the sum of $110,588.25 under the first lease; $127,889.39 under the second lease, and $11,600 in cumulative attorneys' fees.

[6]Defendants allege one additional breach. Pursuant to the Paragraph 11 of the leases, Carroll Film was responsible for all taxes and assessments. However, the Carrolls argue that Agfa unilaterally assumed (without notice) the duty of paying local property taxes on the leased equipment, and then wrongfully applied Carroll Film's lease payments to the property taxes.

The Carrolls maintain that Carroll Film terminated the leases on November 25, 2005 (five days before Leaf assumed AgfaPhoto's rights under the leases), when Paula Carroll notified AgfaPhoto "by computer correspondence and telefax" of the breaches.[7] The Carrolls' attorney sent a confirmatory letter to AgfaPhoto on December 16, 2005.[8]

Paragraph 24 of the leases provides that they are to be construed according to Massachusetts law. Despite defendants' argument that Paula Carroll terminated both of the leases by email, Paragraph 2 of the leases contains a provision stating

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(CAPITAL LETTERS in original). While this provision may seem harsh, similar clauses have been upheld. "[T]he essential practical consideration requiring liability as a matter of law in these situations is that these clauses are essential to the equipment leasing industry." Union Mut. Life Ins. Co. v. Chrysler Corp., 793 F.2d 1, 13 (1st Cir. 1986). In

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[7]According to defendants, the fax stated: "This is to notify you that we will no longer make payments on our leases because of the breaches of contract by Agfa. Agfa has failed to maintain parts and repair programs sufficient to meet their obligations. We have made repeated requests for Preventive Maintenance on our machine in Abilene and were ignored. We have had severe problems with banding of photographs since July and Agfa has been unable to repair our machine. The future looks even more bleak. You have stopped communicating with your customers. Your only answer is 'business as usual.' Since 'business as usual' has come to mean no repairs, no preventive maintenance, and no parts, we see no hope for the future. A letter from our attorneys outlining all of the breaches will follow this notice."

[8]The letter from counsel outlined several other issues with the equipment, including computer crashes, severe overheating, backward installation of fans, and the necessity for Carroll Film to provide its own cooling sources for the computers and power supplies.

the Chrysler case, the contract at issue stated that all payments due were "absolute and unconditional and shall not be subject to any abatement whatsoever, or to any defense, set-off, counterclaim or recoupment whatsoever." Id. at 12. The First Circuit ruled that "[g]iven this language forbidding [defendant] from raising defenses to payment, [defendant], in order to avoid liability, must argue that the parties, in one way or another, agreed to make this clause ineffective." Id.[9] Here, there is no evidence that the parties intended to annul the effect of this clause.

The Carrolls' argument that the leases are unconscionable does not compel a different result. A contract is deemed unconscionable if it is one "such as no man in his senses and not under delusion would make on the one hand, and no honest and fair man would accept on the other." Waters v. Min Ltd., 412 Mass. 64, 69 (1992), quoting Hume v. United States, 132 U.S. 406, 411 (1889). Unconscionability is determined on a case-by-

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[9]Under Massachusetts law, the provision in the leases that prohibits the Carrolls from asserting claims against an assignee such as Leaf is enforceable. The relevant Massachusetts statue provides that

> an agreement between an account debtor [defendants] and an assignor [AgfaPhoto] not to assert against an assignee [Leaf] any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:
> (1) for value;
> (2) in good faith;
> (3) without notice of a claim of a property or possessory right to the property assigned; and
> (4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 3-305(a) [which allows an obligor to defend against enforcement of an obligation to pay based on infancy, duress, illegality of the transaction, fraud, or bankruptcy].

Mass. Gen. Laws ch. 106, § 9-402.

case basis, "giving particular attention to whether, at the time of the execution of the agreement, the contract provision could result in unfair surprise and was oppressive to the allegedly disadvantaged party." Zapatha v. Dairy Mart, Inc., 381 Mass. 284, 293 (1980).

A party claiming unconscionability must prove both procedural and substantive unconscionability, that is, that there was "an absence of meaningful choice on the part of one of the parties, together with contract terms which are unreasonably favorable to the other party." Id. at n.13. Here, there was no potential for unfair surprise to the Carrolls, given that the non-cancellation clause was "neither obscurely worded, nor buried in the fine print in the contract." Id. at 294. To the contrary, the provision was written in capital letters prominently placed at the very beginning of the lease agreements. Nor was there an absence of meaningful choice. Paula Carroll was aware of her ability to reject provisions of the leases, as it is undisputed that she took a pen to black-out numerous sections of the leases with which she disagreed. "Agreements voluntarily made . . . are not to be lightly set aside on the ground of public policy or because as events have turned it may be unfortunate for one party." Crimmins & Pierce Co. v. Kidder Peabody Accept. Corp., 282 Mass. 367, 379 (1933).[10]

Attorneys' Fees

[10]The Carrolls argue that their obligation to make lease payments cannot be divorced from Agfa's obligations under the Service Agreements. Therefore, they argue, they cannot be held liable under the leases because of Agfa's alleged breaches of these agreements. However, even if Leaf could be held liable for Agfa's purported breaches, termination of the leases is not a remedy available to the Carrolls given the express terms of the integration clause incorporated in both leases.

Paragraph 17 of the leases provides that "[l]essee shall be liable for all reasonable collection fees, costs and expenses, including attorneys' fees, arising from event of default and the exercise of Lessor's remedies hereunder." The First Circuit instructs that "[w]hen a contractual fee provision is included by the parties, the question of what fees are owed 'is ultimately one of contract interpretation,' and [the court's] primary obligation is simply to honor the agreement struck by the parties." Accusoft Corp. v. Palo, 237 F.3d 31, 61 (1st Cir. 2001). Leaf's attorney, Richard Gentilli, has submitted an uncontested affidavit detailing the $11,600 in fees incurred on behalf of plaintiff, at a billing rate of $295 per hour (which increased to $325 per hour in April of 2007). The court accepts the amount billed as reasonable – in fact, very reasonable – under the circumstances of the case.

Damages

The Carrolls have not disputed the accuracy of the amount claimed by Leaf as the sum of the accelerated balances and fees owing under the leases, other than to protest that the amount "includes late charges which would reward Agfa and their assigns for breaching the contract on the payment of taxes." The court does not find any substance in the Carrolls' at best de minimis protestation.

ORDER

For the foregoing reasons, the motion for summary judgment is ALLOWED. The Clerk will enter judgment in favor of Leaf in the amount of $238,477.64, plus $11,600 in attorneys' fees, for a total of $250,077.64. Interest is awarded at the Massachusetts statutory rate as of the respective dates of the filing of Leaf's Complaints. The case will now be closed.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE