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# Requirement to Split Utility Expenses Actionable

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requiring acceleration of all payments due without a discount reflecting the time value of money, violated 15 U.S.C. § 1667b(b). After its review of the claim, the circuit court affirmed the lower court's decision and held that Villasenor failed to state a cause of action. Specifically, the Seventh Circuit recognized that the statute requires a factual basis to demonstrate that the early termination charge was unreasonable in light of anticipated or actual harm. Because Villasenor had not terminated his lease, there was no basis for an allegation of harm.

## Disclosures required

Finally, Villasenor alleged that Chrysler violated the Consumer Leasing Act in two respects. First, he contended that Chrysler had not disclosed the complete formula it used in calculating early termination charges, thus violating 15 U.S.C. § 1667a(11). Second, he contended that Chrysler failed to identify all warranties provided by the manufacturer to the lessee, thus violating 15 U.S.C. § 1667a(6). On review, the Seventh Circuit reversed the district court on both of these counts, holding that Villasenor stated a valid claim under both sections.

Villasenor, on appeal, contended that the formula Chrysler used for the early termination charge disclosed in the lease differed from the formula it used regularly in practice. Specifically, he claimed that the formula given in the lease contained a reduction not utilized in the actual computations made by Chrysler when a penalty was assessed.

In its analysis of this issue, the circuit court first turned to the statutory provision in question. The Consumer Leasing Act, 15 U.S.C. § 1667a(11), requires every lessor to provide a statement describing the amount or method for determining any penalty or other charge for delinquency, default, late payment or early termination in each consumer lease. Although determining whether such a discrepancy existed was a matter for the district court, the circuit court recognized that the failure to disclose the entire formula for calculating early termination charge was a technical violation of the disclosure provision found in 15 U.S.C. § 1667a(11) and other regulations. As such, dismissal of the claim had been improper and the issue was remanded.

Villasenor also contended that Chrysler failed to identify the warranties provided by the manufacturer to the lessee, thus violating federal law. Specifically, he contended that the Consumer Leasing Act, 15 U.S.C. § 1667a(6) requires the lessor to provide a statement identifying all express warranties and guarantees made by the manufacturer.

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# *Requirement to split utility expenses actionable*

*By Michael Sullivan*

In *Legg v. Castruccio*, 642 A.2d 906 (Md. 1994), the Maryland Court of Special Appeals held that a landlord commits a deceptive or unfair business practice under the Maryland Consumer Protection Act ("CPA"), section 13–102 of the Commercial Law Article of the Maryland Code, by requiring a tenant to obtain utility services measured by a meter that, unknown to the tenant, also services another rental unit. However, a tenant waives her cause of action if she learns of the arrangement and consents to it. Moreover, the court held that a tenant may sustain a cause of action against her landlord for breach of covenant of quiet enjoyment, provided the tenant complains about the situation and the landlord fails to respond after a sufficient period of time.

## Separate accounts

In spring 1987, Deborah Legg leased the first floor of a two–story house from Sadie and Peter Castruccio on a verbal, month–to–month basis. At that time, the Castruccios informed Legg that she would have to establish her own gas and electric account with the local utility company. However, they failed to inform her that her utility bill would include charges for both the first and second floor apartments.

Subsequently, the Castruccios leased the previously unoccupied second floor apartment to David Bushell, who orally agreed to pay Legg one–fourth of her utility bills. Throughout his tenancy, Bushell regularly paid his share for utilities.

In summer 1988, the Castruccios leased the second floor apartment to Julie Papilon and Vinnie Harcourt. The landlords orally informed the prospective tenants that they would have to pay one half of Legg's utility bills. Papilon and Harcourt subsequently made an oral promise to Legg to pay one–half of her utility bills. The Castruccios documented this agreement by recording a note in their rent ledger.

## Tenants decide to leave

Beginning in July 1990, about two years after the initial agreement with Legg, Papilon and Harcourt stopped paying for most of their utility usage. Between July 1990 and December 1991, they accumulated $2,155.36 in utility expenses. Papilon and Harcourt paid Legg $140 of this amount.

During this period, Legg complained to the Castruccios, asking that separate meters be installed in the house. Although the landlords stated that they "would take care of it," they took no action against Papilon and Harcourt and did not install separate meters.

In early November 1991, Papilon and Harcourt moved out of their apartment. They left an outstanding utility bill of $2015.36. At that time, Legg was in arrears with the utility company, in part because of the upstairs tenants' delinquency.

Subsequently, the Castruccios brought suit against Legg in the Circuit Court for Anne Arundel County for repossession of rented property. On the day of trial, Legg filed a counterclaim against her landlords. In her amended complaint, she sought rent abatement, damages, and attorney fees from the Castruccios, alleging that they had illegally leased her an unsafe apartment in an unlicensed multiple dwelling. She also alleged that the Castruccios had engaged in unfair or deceptive trade practices in the rental of consumer property by representing that the upstairs tenants in her building would pay one–half of the utility expenses.

On May 5, 1991, both parties resolved all of the disputed issues except whether the Castruccios had any responsibility for Legg's unpaid utility bills. On this issue, the trial court held that the Castruccios refusal to pay for the utilities of the upstairs tenants did not: (1) create a dangerous defect; (2) create an illegal appropriation of utility charges; (3) breach the covenant of quiet enjoyment; (4) breach an agreement to pay for such service; or (5) violate the CPA as a deceptive or unfair trade practice or the Federal Trade Commission ("FTC") consumer unfairness doctrine.

Legg appealed the lower court's ruling, presenting three questions for review by the Maryland Special Court of Appeals. These included: whether a landlord's failure to inform a tenant that she was responsible for all charges on her utility meter, including those of other tenants, violated the CPA; whether a landlord's burdening of one tenant with the potential utility bills of another tenant violated the CPA; and whether a landlord, through such a burdening, breached the covenant of quiet enjoyment.

## Actual loss required

The CPA was designed to protect consumers from unfair or deceptive business practices, including certain practices involved in apartment leasing. For a private consumer to sustain a cause of action under the CPA, she must demonstrate an actual injury or loss resulting from an activity prohibited by the statute. This requirement serves, in part, to discourage consumers from bringing CPA claims to harass or coerce merchants.

Legg first asserted that the Castruccios deceived her by leasing the first floor apartment without notification that her utility bill would include the usage of the second floor apartment. She contended that such behavior constituted a "failure to disclose a material fact," and violated the CPA's proscription of deceptive business practices. Citing *Golt v. Phillips Bros. & Assocs.*, 517 A.2d 328 (Md. 1986), Legg contended that a fact was material if "a significant number of unsophisticated consumers would attach importance to the information in determining a choice of action."

In its analysis, the court agreed with Legg, concluding that a significant number of unsophisticated consumers would attach importance to whether their utility bill would include the utility usage of other tenants. It held that the Castruccios, by not disclosing this fact to Legg prior to the beginning of her tenancy, had violated the CPA for failing to state a material fact. Nevertheless, the court dismissed the claim, finding that Legg had waived her right to recover by remaining on the premises and consenting to the billing arrangement. Because of this waiver, any injury that Legg sustained resulted from the other tenants' delinquency, and not from the landlords' failure to disclose information about the rental situation.

Additionally, the court also dismissed Legg's argument that the Castruccios had a duty, under the deceptive business practices doctrine, to warn her of what would happen if she did not pay her utility bills. It determined that such a duty rightly belonged to the utility company. Moreover, the court also dismissed Legg's contention that the Castruccios' statement that "they would take care of it" meant Legg was not responsible for the upstairs tenants' share of the utility bill. The court ruled that this statement was simply a response to Legg's request for separate utility meters.

### Claim fails test

Legg then asserted that, in violation of the CPA's proscription of unfair business practices, the Castruccios conditioned her continued tenancy on whether she accepted the burdens and liabilities of having other tenants' utility usage on her meter. In deciding this issue, the court employed the FTC's test for unfair business practices, finding it consistent with the goals and philosophy of the CPA. According to this test, an "unfair business practice" is one that is substantial, is not "outweighed by any countervailing benefits to consumers or competition that the practice produces", and causes "injury that consumers themselves could not have reasonably avoided."

Applying the FTC test, the court dismissed Legg's unfair business practices claim. It found that Legg could have reasonably avoided injury by moving out of the apartment. Moreover, considering her month–to–month lease and the availability of similar apartments in the area with separate utility metering, Legg could have done so with relative ease. Corrective action, the court explained, is only necessary to deter seller behavior that effectively prevents a consumer from making her own decisions.

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# Minnesota statutes protect rent–to–own customers

*By Aimee Latimer*

In *Miller v. Colortyme, Inc.*, 518 N.W.2d 544 (Minn. 1994), the Supreme Court of Minnesota held that rent–to–own transactions are consumer credit sales as defined by the Minnesota Consumer Credit Sales Act ("CCSA"), sections 325G.15 and 325G.16 of the Minnesota Statutes. It also held that such transactions are subject to the interest rate limitations of the state's general usury statute. Furthermore, the supreme court found that the Rental–Purchase Agreement Act ("RPAA"), sections 325F.84 to 325F.98 of the Minnesota Statutes, did not repeal the CCSA but rather provides remedies, that in conjunction with the CCSA, are cumulative.

### Rent–to–own customers pay more

D.E.F. Investments, Inc. ("DEF") and its subsidiaries operate several rent–to–own dealerships in Minnesota. DEF uses standard forms to lease a variety of consumer goods to its customers. Under these contracts, a customer agrees to rent an item on either a weekly or monthly basis. At the end of the selected term, the customer has the option to renew the contract. Additionally, if the customer has renewed the contract for a specified number of terms, she obtains title and ownership of the item. In such cases, the total rental price exceeds the fair market value price of the item.

Delilah Miller and Craig Stenzel each entered into rent–to–own agreements with DEF that extended over several years. Miller signed a DEF agreement for a used washer and dryer with a stated purchase price of $800.75. According to her contract, she could acquire ownership by making either 16 monthly payments of $84.40 for a total purchase price of $1,350.40, or 69 weekly payments of $21.10 for a total purchase price of $1,455.90. Stenzel signed a similar contract for a television with a market value of $470. According to the terms of his contract, Stenzel could obtain ownership by making either 18 monthly payments of $47.70, totaling a purchase price of $858.60, or 78 weekly payments of $12.75, totaling $994.50.

On April 7, 1992, Miller and Stenzel filed a class–action lawsuit in state court against DEF. In their complaint, they alleged that: (1) DEF's rent–to–own agreements were consumer credit sales as defined by the CCSA; (2) DEF violated the CCSA by failing to treat the agreements as consumer credit sales; and (3) DEF committed usury in violation of the state's usury statute.

Subsequently, Miller and Stenzel moved for partial summary judgment, requesting a declaratory judgment that DEF's contracts constituted credit sales. DEF then moved for partial summary judgment, asking the court to dismiss the usury claim.

The district court certified the plaintiff class and granted its motion for partial summary judgment, declaring that rent–to–own contracts constituted consumer credit sales. The court also granted summary judgment for the plaintiffs on the usury claim, reserving the amount of damages for the trier of fact.

After granting discretionary review, the court of appeals reversed the district court. It found that DEF's rent–to–own agreements were neither consumer credit sales nor usurious. Additionally, the appellate court suggested that the recently enacted RPAA substantially conflicted with the CCSA and that the RPAA was controlling. Miller and Stenzel then appealed to the Minnesota Supreme Court.

## Court defines rent–to–own agreements

On review, the Minnesota Supreme Court first considered whether the CCSA defined rent–to–own agreements as consumer credit sales. The court noted that at common law, rent–to–own transactions were treated as leases, rather than sales. This was because the customer was never bound to pay the total purchase price of an item and could terminate the "lease" at any time by returning the item. The supreme court suggested that the state legislature indicated its intent to move away from this rule and subject such terminable leases to consumer credit sales protection laws when it amended the CCSA in 1981. This amendment defined certain terminable leases as a "sale of goods" if the contracts met three criteria: (a) the bailee or lessee has the option to renew the contract by making the payments specified in the contract, (b) the contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee for no other or a nominal consideration upon full compliance by the bailee or lessee to renew the contract, and (c) the payments contracted for by the bailee or lessee, including those payments pursuant to the exercise of an option by the bailee or lessee to renew the contract, are substantially equivalent to or in excess of the aggregate value of the property and services involved.

Turning to the case at hand, the court found that DEF's rent–to–own contracts satisfied each of the above requirements and therefore constituted a "sale of goods." Furthermore, it held that such transactions were consumer credit sales because the buyer was not required to make full payment when acquiring possession of an item, but could pay for it over a period of time. Moreover, the court stated that the term "credit" must be interpreted liberally to further the goal of the CCSA, which is consumer protection. It concluded that the legislature, in amending the Act to include the definition of certain terminable leases as "sales," intended for these transactions to be protected under the CCSA.

## Company violated usury law

The Minnesota Supreme Court then addressed the issue of whether DEF violated Minnesota's usury law. On its behalf, DEF argued that its rent–to–own transactions were not usurious because the first two common law elements of usury, forbearance of debt and an absolute obligation to repay a principal amount, were not involved in the disputed contracts. Furthermore, DEF contended that the rent–to–own customer neither incurred any debt nor was required to pay a principal amount.

Although the court agreed with DEF's assertions, it nonetheless concluded that DEF's transactions were usurious. It declared that by amending the CCSA to define rent–to–own agreements as consumer credit sales for all purposes, the Minnesota legislature intended to extend to rent–to–own consumers the same benefits of consumer protection laws, including the usury statute, extended to those who entered into ordinary credit agreements or installment sales plans. The court stated that rent–to–own agreements were analogous to ordinary credit agreements "in that they must either forfeit possession of a good or continue paying for it." Therefore, the first two elements of common law usury were met by operation of statute under the CCSA.

Additionally, the court found that the third and fourth elements of common law usury, charging an excessive rate of interest and intending to "evade the law at the inception of the transaction," were also met in the present case. DEF acknowledged the large difference between the price its customers paid to purchase goods through the rent–to–own agreements and the actual value of the goods. However, it argued, that it offered services, such as free delivery and maintenance, which justified the higher cost, and this presented a factual issue as to whether it charged excessive interest. The court, however, found that DEF offered no real evidence of the value of such services. As a result, the court concluded that no reasonable factfinder would find that the large disparity between the prices DEF charged and the value of the goods and services DEF offered fell within the amount allowed by the usury statute.

Addressing the fourth element of usury, the court stated that while DEF did not intend to violate the usury law, it did intend to charge an excessive rate of interest, which is all that is required by the statute. Therefore, the supreme court concluded that that lower court correctly found no genuine issue of material fact as to whether DEF violated the usury statute and therefore properly granted summary judgment for the plaintiffs on their usury claim.

### RPAA and CCSA offer choice of remedies

Finally, DEF contended that the RPAA, enacted in 1990, effectively repealed the CCSA. In analyzing this issue, the supreme court examined both the language and legislative history of the RPAA and concluded that it did not expressly repeal the CCSA. In so ruling, the court noted in particular that the RPAA that stated that the remedies offered "shall not be construed as restricting any remedy that is otherwise available." The court also observed that while the legislature had considered repealing the CCSA and had even included such wording in the original statute, it later adopted amendments that deleted such provisions. Because the legislature did not expressly state its intent to repeal the CCSA or restrict the consumer's remedies to those listed in the RPAA, the court held that the plaintiffs were not barred from seeking a remedy under the CCSA. Furthermore, the court did not find that the two laws were in irreconcilable conflict with one another. Rather, it held that the two laws could be interpreted to offer cumulative remedies for consumer protection.

In concluding, the Minnesota Supreme Court held that all rent–to–own transactions must be treated as consumer credit sales, as defined by the CCSA, and that rent–to–own customers were entitled to statutory protections. It affirmed summary judgment for the plaintiffs and remanded the case to the trial court for the determination of damages.

## *Lanham Act does not cover consumer claims*

*By Travis Ketterman*

In *Serbin v. Ziebart Int'l Corp., Inc.*, 11 F.3d 1163 (3d Cir. 1993), the Third U.S. Circuit Court of Appeals held that consumers do not have standing to bring false advertising claims under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Additionally, the court held that the 1988 amendment to the Lanham Act did not broaden its jurisdiction to include consumer claims.

The Lanham Act, as enacted in 1946, regulates and protects trademarks; in addition, it protects persons engaged in commerce from the "deceptive and misleading use of the marks." The 1946 statute provided a cause of action for persons engaged in commerce when another person knowingly uses false advertising in the merchandising of goods and services. In 1988, Congress modified Section 43(a) to authorize "any person who believes that he or she is likely to be damaged by such acts" to bring a cause of action under the Lanham Act in federal court. In a consolidated appeal, the Third Circuit addressed whether the original Lanham Act, or its more recent modification, was sufficiently broad to give standing to consumers who did not assert any commercial interest or injury.

In 1990, Sara Serbin and George Baker purchased new automobiles in separate transactions. At the time of these purchases, each also purchased a "Super Rust Protection" policy from the defendants, Ziebart International Corporation and Ziebart Company (collectively referred to as Ziebart). Subsequently, Serbin and Baker brought suit against Ziebart in the U.S. District Court for the Western District of Pennsylvania, alleging that defendants' advertisements about "Super Rust Protection" contained false representations which misled them into purchasing the additional policy. Moreover, they