[illegible] the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

FILE AND ENTERED ON 1-15 2003 WESTCHESTER COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COMMERCIAL DIVISION, WESTCHESTER COUNTY

Present: HON. KENNETH W. RUDOLPH
Justice.

----------X

LUDL ELECTRONIC PRODUCTS LTD., individually and on behalf of all others similarly situated,

Plaintiff,

-against-

WELLS FARGO FINANCIAL LEASING, INC.,

Defendant.

----------X

Index No. 4654/02
Motion Date: 8/16/02

DECISION

The following papers numbered 1 to 19 read on this motion.

	PAPERS NUMBERED
Notice of Motion/Affidavit/Exhibits A-E/Memorandum of Law	1-8
Answering Affirmation/Exhibits 1-8/Memorandum of Law, Plaintiff	9-18
Reply Memorandum of Law, Defendant	19

Upon the foregoing papers, it is ORDERED that this motion by defendant for an order, pursuant to CPLR 3211 (a) 1 and 7 dismissing plaintiff's complaint, is decided as follows.

The complaint of plaintiff, Ludl Electronic Products Ltd., ("Ludl") alleges three causes of action against defendant, Wells Fargo Financial Leasing, Inc.: violation of General Obligations Law ("GOL") §5-901, violation of General Business Law ("GBL") §349 and unjust enrichment. Plaintiff seeks money damages and injunctive relief in the first two causes of action and money damages in the third cause of action.

Pursuant to a lease agreement ("lease") dated August 23, 1995, Ludl leased telephone switching equipment from an entity known as Finova Capital Corporation ("Finova"). The lease was for five years and was by its terms subject to automatic renewal for one year in the absence of a notice from Ludl terminating the lease and returning the equipment; Ludl did neither. Ludl contends that automatic renewal was illegal under New York law and was used to pressure Ludl to agree to an inflated purchase option price in January, 2001, at which time the lease was terminat-d by agreement.

The alleged violation of GOL §5-901 arises out of defendant's failure to give plaintiff notice calling the attention of plaintiff/lessee to the existence of GOL §5-901 conditioning the validity of the deemed renewed provision of the lease upon such notice. The violation of GBL §349 alleges that defendant's conduct constitutes deceptive acts or practices in the conduct of business, trade or commerce or in the furnishing of services in this State which affects the public interest. The unjust enrichment cause action alleges that defendant has been unjustly enriched at the expense of and to the detriment of plaintiff by wrongfully collecting monies to which it is not entitled. In sum, defendant's failure to give plaintiff the GOL §5-901 notice, precluded plaintiff's option simply to return the outdated equipment at lease end, to be replaced by technologically current equipment or pay the targeted purchase option price of $4500.00 instead of the $18,000. plus, which plaintiff ended up paying because of defendant's wrongful and deceptive conduct.

Defendant, Wells Fargo Financial Leasing, Inc. ("Wells Fargo") contends that the expiration and renewal of the original lease and subsequent negotiations for purchase of the equipment all took place before Wells Fargo acquired an interest in the lease. Wells Fargo purchased the Ludl lease, as part of a bulk transaction, from Finovia's parent, Conseco, on January 31, 2001. The lease contains a valid and enforceable choice of law clause, which calls for Minnesota law to be applied herein instead of New York law. If New York law applies in this matter, Ludl can claim no damages under GOL §5-901, since it kept and utilized the leased equipment after the original term of the lease expired and made lease payments while it possessed and used the equipment. Too. if New York law applies, Ludl can make no claim under GBL §349, because this was not a "consumer oriented" transaction, and the automatic renewal terms were fully disclosed in the lease. Therefore, there was and could be no false or misleading statement therein. Ludl has no claim under New York law for unjust enrichment, because it paid Wells Fargo only for the purchase of the equipment. The

price paid was negotiated at arm's length. Finally, Ludl is not entitled to maintain any claim for injunctive relief because the lease has been terminated and Ludl faces no conceivable risk or prospect of any future injury whatsoever.

Wells Fargo assumed pre-existing obligations of Conseco. The Finova/Ludl lease agreement specifically provides that an assignment will not relieve Finova of its obligations to Ludl but the rights of the new lessor will not be subject to any claims defenses or setoffs that Ludl may have against Finova. The Conseco/Ludl lease assigned to Wells Fargo provides that Minnesota law governs the lease. This Court finds that the choice of Minnesota law bears a "rational relationship" to the parties contractual agreement and the application of Minnesota law will not violate a "fundamental policy" of New York. Minnesota law does not require notice to enforce an automatic renewal provision.

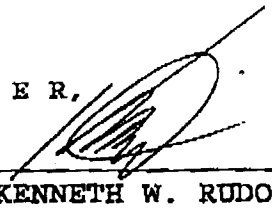
Assuming arguendo, New York law applies, Ludl has no claim pursuant to GOL 5-901. Ludl may not pay for and receive benefits of a lease beyond the lease term and thereafter void the agreement retroactively and receive reimbursement by invoking GOL 5-901. See, Concourse Nursing Home v. Axion Funding Group, Inc., 279 AD2d 271. Too, the instant lease was terminated by a bargained for agreement. GBL 349 is inapplicable to commercial leases and there is nothing before the Court to evidence that Ludl's conduct or transactions were consumer oriented or directed to consumers. See, Oswego Laborer's Local 214 Pension Fund v. Marine Midland Bank, 85 NY2d 20, 25; Cruz v. NYNEX Information Resources, et al., 263 AD2d 285. Finally, the January 21, 2001 agreement between Ludl and Conseco fixing a purchase option price of the leased equipment precludes a recovery herein on quasi contract/unjust enrichment. See, Clark-Fitzgerald, Inc. V. Long Island Rail Road Company, 70 NY2d 382, 389.

Defendant's motion to dismiss is granted; plaintiff's complaint is dismissed.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
January 14, 2003

E N T E R,



HON. KENNETH W. RUDOLPH
Justice of the Supreme Court

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