

**Citicapital Tech. Fin., Inc. v Joseph Neri  
Chevrolet Olds Pontiac, Inc.**

2007 NY Slip Op 30880(U)

February 24, 2007

Supreme Court, Wayne County

Docket Number: 0055358/2006

Judge: Stephen R. Sirkin

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STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF WAYNE

CITICAPITAL TECHNOLOGY FINANCE, INC.,  
f/k/a EAB Leasing Corp., as assignee of Lease  
Marketing, Ltd.,

Plaintiff,

-vs-

**DECISION**  
Index # 55358

JOSEPH NERI CHEVROLET OLDS  
PONTIAC, INC.,

Defendant .

OPINION OF THE COURT

**STEPHEN R. SIRKIN, J.**

Motion by plaintiff for Summary Judgment in action arising out of a "Dealerlink Agreement" entered into between plaintiff's assignor, Lease Marketing, Ltd. (LML) and Joseph Neri Chevrolet Olds Pontiac, Inc. (Neri) on March 1, 2002. The Dealerlink agreement was assigned by LML to plaintiff's predecessor, Fidelity, on March 4, 2002. LML assigned its rights to collect the lease payments to plaintiff's predecessor, but retained all obligations to provide Neri equipment maintenance, servicing and training.

Neri maintains that it made whatever payments it made to LML, was unaware of the assignment, and that on February 23, 2004, plaintiff settled a then pending action with LML by the filing of a stipulation of discontinuance in the office of the Monroe County Clerk under index number 12764/03. Under the terms of the settlement, Neri paid LML the sum of \$975 and LML was to pickup the equipment that was agreed, for purposes of the litigation, to be defective.

The instant action was commenced approximately two months after the settlement of the action between LML and Neri. Plaintiff claims that it was not aware of any potential claims between LML and Neri, and points to language in the lease whereby Neri agreed that should

LML assign the lease, Neri “agrees that the rights of the assignee will not be subject to any claims, defenses, or setoffs that [Neri] might have against LML.”

While plaintiff may claim such protected status in a proper case, in the instant case a question of fact arises as to whether plaintiff should be estopped from claiming those rights by reason of the contract provisions in the assignment which were specifically designed to conceal the assignment from Neri. Paragraph 6 of the Private Label Dealer Agreement between plaintiff and LML provides (emphasis added):

6. Leases. From the date of Assignment and Bill of Sale forward, Fidelity [plaintiff's predecessor] shall provide general lease administrative services in connection with all Leases between Lessee and Seller sold and assigned to Fidelity by Seller hereunder, including invoicing, billing and collection of Payments when due and enforcement of Fidelity's rights under the Lease. ***Fidelity and Seller agree that the Lessee shall not be notified by either Seller or Fidelity of the Assignment of the Leases*** to Fidelity (Private Label Program). Pursuant to the Private Label Program, Fidelity shall invoice the Lessee for all amounts due under the Leases in the name of Seller and will direct the Lessee to make all Payments payable to Seller and remit the same to Fidelity.


Although plaintiff's predecessor in interest reserved the right to invoice in its own name if Seller did not perform pursuant to the agreement, apparently this was not done in the period leading to the settlement of the Monroe County Action. As a result, Neri was reasonably led to believe that the settlement reached in that action would resolve this matter. It was likewise reasonable for the Courts of this State to conclude that the stipulation of settlement would resolve the issues presented and not lead to the sudden appearance of an until then unknown litigant who would allow Neri to pay \$975, have LML pick up the equipment, and then sue for payments as if

nothing had occurred.

The papers do not make out a sufficient showing at this time to entitle plaintiff to avoid either the defenses Neri has against LML nor whether plaintiff should be estopped to claim a status not subject to these claims. By reason of the aforesaid, it is not necessary for the Court to determine the interplay between leases and contracts for the sale of goods, or whether plaintiff acquired the status of a holder in due course for, even if that status had been acquired, plaintiff's action or non action during the pendency of the Monroe County litigation may well deprive plaintiff of the status sought on this motion. Accordingly, the motion for summary judgment is denied.

Counsel for defendant to submit proposed Order in accordance with this decision.

Dated: February 24, 2007  
Lyons, New York



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STEPHEN B. SIRKIN  
Supreme Court Justice, Acting