

(Cite as: 243 A.D.2d 534, 663 N.Y.S.2d 104)

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Supreme Court, Appellate Division, Second Department,
New York.COPELCO CAPITAL, INC., Respondent,
v.
PACKAGING PLUS SERVICES, INC., Appellant.

Oct. 14, 1997.

Lessor's assignee brought action against lessee for recovery of rental payments due under equipment leases. The Supreme Court, Nassau County, Alpert, J., entered summary judgment for assignee. Lessee appealed. The Supreme Court, Appellate Division, held that assignee was holder in due course that could enforce waiver of defenses clause.

Affirmed.

West Headnotes

[1] Secured Transactions 190
[349Ak190 Most Cited Cases](#)

Under New Jersey law, once "waiver of defenses" is raised with respect to nonconsumer transaction involving assignment, burden shifts to party claiming rights of holder in due course to establish that he is indeed holder in due course. [N.J.S.A. 12A:9-206\(1\)](#).

[2] Secured Transactions 190
[349Ak190 Most Cited Cases](#)

Under New Jersey law, execution of assignments and equipment leases, proof of payment for assignments, and affidavits and affirmation submitted by lessor's assignee established prima facie case that assignee paid value for assignments and took them in good faith without notice of any alleged claims or defenses to them and, hence, that assignee was holder in due course that could enforce waiver of defenses clause. [N.J.S.A. 12A:9-206\(1\)](#).

**104 Kral, Clerkin, Redmond, Ryan, Perry & Girvan, New York City (Charles E. Reuther, of counsel), for appellant.

Moritt, Hock & Hamroff, LLP, Garden City (Robert M. Tils and Michael S. Re, of counsel), for respondent.

**105 Before [COPERTINO](#), J.P., and [THOMPSON, FRIEDMANN](#) and [FLORIO](#), JJ.

MEMORANDUM BY THE COURT.

*534 In an action, *inter alia*, for the recovery of rental payments due under equipment leases, the defendant

appeals from a judgment of the Supreme Court, Nassau County (Alpert, J.), entered July 3, 1996, which, upon an order of the same court granting the plaintiff's motion for summary judgment, is in favor of the plaintiff and against it in the principal sum of \$47,734.80.

ORDERED that the judgment is affirmed, with costs.

Minolta Copier Corporation (hereinafter Minolta) entered into five separate and distinct leases with Packaging Plus Services, Inc. (hereinafter Packaging), lessee and defendant herein, for the rental of five photocopy machines. In accordance with the leases, Packaging agreed to make 36 monthly payments for each of the five leased copiers. In addition, Packaging signed a waiver of defenses provision whereby it agreed that in the event Minolta should assign any or all of the leases, "the new owner will not be subject to any claims, defenses, or set-offs that [Packaging] may have against [Minolta]". Minolta assigned the leases to Copelco Capital, Inc. (hereinafter Copelco), a financing institution, on the same day or shortly after each lease was entered into. Packaging then began to default on each of its lease agreements, claiming that problems with the machines rendered them unusable. The trial court, applying New Jersey law as required by the governing law provisions of the leases, found that Packaging failed to raise a factual issue that Copelco did not obtain the assignments in good faith and for value and thus granted Copelco's motion for summary judgment.

Under the Uniform Commercial Code as adopted in New Jersey, an agreement by a lessee "that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense" ([N.J. Stat. Annot. § 12A:9-206\(1\)](#)). Under New Jersey's statutory framework, as well as that of most other States, the courts usually find no legal impediment to the validity of such waiver of defenses clauses in nonconsumer transactions when asserted by holders in due course (*see, First Natl. State Bank of New Jersey v. Reliance Elec. Co.*, 668 F.2d 725; *535 [Chemical Bank v. Penny Plate](#), 144 N.J.Super. 390, 365 A.2d 945; [Dean v. Universal C.I.T. Credit Corp.](#), 114 N.J.Super. 132, 275 A.2d 154).

[1][2] Once this "waiver of defenses" has been raised, the burden shifts to the party claiming the rights of a holder in due course to establish that he is indeed a holder in due course (*see, General Inv. Corp. v. Angelini*, 58 N.J. 396, 278 A.2d 193; *see also, First Nat. State Bank of New Jersey v. Reliance Elec. Co.*, *supra*; [Dubin v. Hudson County Probation Dept.](#), 267 N.J.Super. 202, 630 A.2d 1207; [Breslin v. New Jersey Investors, Inc.](#), 70 N.J. 466, 361 A.2d 1). The execution of the assignments and the leases, proof of

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payment for the assignments, and the affidavits and affirmation submitted by Copelco established a prima facie case that Copelco paid value for the assignments and took them in good faith without notice of any alleged claims or defenses to them and, hence, that Copelco was a holder in due course. The burden then shifted to Packaging to prove its contention that Copelco was not a holder in due course in that Copelco's close connection with Minolta precluded it from obtaining the assignments in good faith. Given that Packaging has failed to produce any evidence to rebut Copelco's prima facie showing that it obtained the assignments in good faith and without notice of the alleged claims that the leased equipment was unusable, Copelco is, as a matter of law and by virtue of [New Jersey Statutes Annotated § 12A:9-206](#), free of those defenses raised by Packaging.

Packaging's remaining contentions are without merit.

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