

CITATION: MVL Leasing Limited v. Chanel Holdings Ltd. and Raso, 2015 ONSC 5361
DIVISIONAL COURT FILE NO.: 587/14
DATE: 20150826

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:)
)
MVL LEASING LIMITED) *Jordon B. Farkas, for the Plaintiff/*
) *Respondent*
Plaintiff/Respondent)
)
– and –)
)
CHANEL HOLDINGS LTD. and FRANK) *Frank Miceli, for the Defendants/Appellants*
RASO)
)
Defendants/Appellants)
)
)
) **HEARD at Toronto:** August 26, 2015

NORDHEIMER J. (ORALLY)

[1] The defendants appeal from the decision of Deputy Judge Tait of the Small Claims Court dated November 19, 2014 in which the trial judge granted judgment in favour of the plaintiff and dismissed the defendants' counterclaim.

[2] The issues in this proceeding arise out of a lease of a 2004 Ferrari by the defendants from the plaintiff. The defendants defaulted in the lease payments and the vehicle was repossessed by the plaintiff and sold. The plaintiff claims the difference between the value of the vehicle when sold and the value stipulated in the lease schedule for the vehicle along with related expenses.

The lease provided that if there was default the defendants would be liable for any difference between the stipulated value and the actual value received on a sale.

[3] Only one ground of appeal is now advanced by the defendants. The arguments regarding the application of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sched. B and the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A, have been abandoned.

[4] The sole ground now advanced is that the trial judge erred in finding that the schedule to the lease for the Ferrari incorporated an earlier master lease agreement that had been signed in 2002 when the defendants leased a Porsche from the plaintiff. I cannot find any fault in the trial judge's conclusion that the master lease agreement governed the lease of the vehicle. The master lease agreement expressly provides that it applies to "any vehicle schedule executed by the parties and referencing this Agreement Number". The schedule for the Ferrari was executed by the defendants and references the Agreement Number. Further, the schedule expressly references the master lease agreement when it says:

I/We hereby order for lease under the terms of the above-noted Lease Agreement, which is incorporated herein by reference ...

[5] The trial judge found that the individual appellant was a sophisticated businessman who understood commercial agreements. He also found that the defendants had entered into the master lease agreement, that they understood the terms of that lease agreement, that it covered the lease of the vehicle in question, that they defaulted on the lease and that they were responsible for the consequences of that default. I cannot find any error in the trial judge's conclusions on any of those issues.

[6] The appeal is dismissed.

[7] I have endorsed the Appeal Book as follows: “For oral reasons given today, the appeal is dismissed. In my view given the normal allowances for costs in this Court, the costs of the appeal should be fixed at \$5,000 inclusive of disbursements and HST to be paid by the appellants to the respondent within 30 days.”

NORDHEIMER J.

Date of Reasons for Judgment: August 26, 2015

Date of Release: August 27, 2015

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BETWEEN:

MVL LEASING LIMITED

Plaintiff/Respondent

– and –

CHANEL HOLDINGS LTD. and FRANK RASO

Defendants/Appellants

ORAL REASONS FOR JUDGMENT

NORDHEIMER J.

Date of Reasons for Judgment: August 26, 2015

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