

SCANNED ON 10/10/12

0003

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Milton A. Tingling
Justice

PART 44

Foot Locker Inc

INDEX NO. 102024/07

MOTION DATE _____

Omni Funding Corp of America

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause -- Affidavits -- Exhibits _____ | No(s) _____

Answering Affidavits -- Exhibits _____ | No(s) _____

Replying Affidavits _____ | No(s) _____

Upon the foregoing papers, it is ordered that this motion is

*Decided in accordance with attached
memorandum of decision*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

JAN 30 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/24/12

Mgt J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK-COUNTY OF NEW YORK

PRESENT: Honorable Milton A. Tingling
Justice

Part 44

-----X
Foot Locker Inc.,

Index No.: 102084/2007

Plaintiff,

DECISION

-against-

Omni Funding Corp. Of America,

FILED

Defendant.

JAN 30 2012

-----X
Plaintiff, Foot Locker, sues for a declaratory judgment, adjudging and decreeing that
Defendant, Funding Corp. Of America failed to designate crating and shipping instructions and
as a result, Plaintiff cannot be found to have breached the Agreement.

The trial was preceding by a stipulation of facts wherein both parties agreed that said
facts could be considered evidence as if testimony was given at trial in this matter. The stipulated
facts were:

- 1. The parties hereto entered into a lease for the photocopiers at issue.**
- 2. The lease was amended by a document executed January 29, 2005.**
- 3. The plaintiff sent the defendant correspondence dated July 7, 2006 notifying defendant of its intention not to renew the lease.**
- 4. The lease was not renewed.**
- 5. The plaintiff did not return the leased photocopiers to the defendant on or before December 31, 2006.**
- 6. The defendant made a demand in writing on January 2, 2007, that the leased photocopiers be returned.**
- 7. The plaintiff requested that the defendant dispatch agents to pack and remove the photocopier or provide plaintiff with a detailed explanation on how to de-install them, pack them and ship them back to the defendant.**
- 8. The defendant did not dispatch agents to pack and remove the photocopiers in response to the plaintiff's request on January 2007.**

9. The defendant did not provide the plaintiff with a detailed explanation on how to de-install the photocopiers, pack them and ship them back to the defendant.
10. Instead, the defendant declared that the lease had been renewed for another year and elected to hold the plaintiff in default for failing to make lease payments.
11. The plaintiff rejected that the lease be renewed for an additional year and refused to make another year's worth of lease payments.
12. The plaintiff made two subsequent written requests for the defendant to dispatch agents to pack and remove the photocopiers or provide the plaintiff with a detailed explanation on how to de-install them, pack them and ship them back to the defendant.
13. In or about January 2005, plaintiff paid defendant \$14,187.00 because it caused damage to copiers by moving them to another part of its office without permission.

Plaintiff previously moved for an order granting summary, which this Court denied.

After appeal, the decision was unanimously affirmed. The Appellate Court found that Plaintiff timely provided written notice of cancellation but failed to timely return the equipment to defendant. Plaintiff asserts the omission to defendant's refusal to provide written instructions on how to properly crate and ship the equipment, despite several written requests for such instructions. Defendant insists that it complied with the lease by providing an oral instruction to use a private trucking company and that when Plaintiff failed to return the copiers in a timely fashion, an automatic renewal provision was triggered.

The notice provision in the lease was found by the Appellate Court to be ambiguous as to a requirement for written notice regarding specifications for return of the copiers post cancellation. A contract is ambiguous if reasonably susceptible of more than one interpretation. Chimart v Paul, 66 NY2d 570.

From the omission of seven simple words, instructions for return must be in writing. The Court has been blessed with five (5) years of litigation including an appeal, a trial and this decision.

There is legality and reality. Unfortunately, some are unable to see either.

Reality, common sense or any sense in this matter dictated simple written instructions by Defendant to Plaintiff on how to proceed.

This Court finds that no rational, reasonable oral instructions were ever given by Defendant to Plaintiffs as how to pack, de-install and or return the copiers to them in order for Plaintiffs to comply with the lease in a timely manner.

Judgment in favor of Plaintiff.

Settle Judgment on Notice.

FILED

JAN 30 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

Dated: January 18, 2012

me

J. S. C.