

Contract fraud: NY court refuses to dismiss claims

The case of equipment-leasing company, accused of hiding overcharges in its contracts, will now head back to a trial court in Manhattan

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NEW York's highest court refused last week to dismiss fraud claims against officers of an equipment-leasing company accused of hiding overcharges in its contracts with small businesses nationwide.

The case is headed back to trial court in Manhattan, which will first decide whether to certify it as a class-action suit with up to 700,000 victims, plaintiffs' attorney, the prominent New York-based Indian American lawyer Krishnan Chittur said. Overcharges by Northern Leasing Systems of a few dollars monthly for insurance waivers on office equipment could total \$180 million over the past 10 years, he said.

NLS attorney Abraham Skoff said the leasing company did not instruct independent sales outlets to hide the contracts' fine print or refuse to hand out copies. "If they didn't give out the sales contract it's not because we told them not to," he said.

In its 5-2 ruling, the Court of Appeals majority said it's reasonable to infer NLS officers would have been involved if there was a national scheme to mislead customers about contract terms. "Here it is significant that plaintiffs, unrelated to one another, all registered parallel complaints," Judge Theodore Jones Jr. wrote.

Chief Judge Judith Kaye and judges Carmen Beauchamp Ciparick, Victoria Graffeo and Eugene Pigott Jr. agreed. Plaintiffs in

the appeal were from New York, Missouri, Texas and Washington. New York-based NLS leases credit card processing and other office equipment.

Judge Robert Smith, joined by Judge Susan Phillips Read, dissented. He said the contract didn't appear designed to deceive, and most people simply don't read the contracts they sign in relatively small transactions. "Since there is no basis for thinking that NLS supervised or instructed the salespeople, I do not see how it, or its officers, can be blamed for any trickery in which the salespeople engaged," Smith wrote.

At issue is whether NLS's four-page contracts were designed to appear, or presented, as one-page contracts, signed at the bottom of the first page, with a notice in small print of more pages where the language about insurance waivers and other terms appeared.

"The people that deal with customers are independent sales organizations" that are also selling other things, Skoff said. "Ordinarily we don't know how each independent sales organization goes about its business. ... I do expect when we get into the facts of this case the facts will show not every lessee had the document presented to them in the same way."

Chittur said the focus of the complaint isn't the presentation, but the language, structure and format of the contracts themselves, though adding it was "uniform practice" not to give customers a copy. "The first page gives you the impression of a complete document," he said.