

# Crapshoot *in the* Courthouse:

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he judiciary, the third branch of government, is supposed to be the dispassionate one. Justice is supposed to be blind, unbiased, impartial—but in our hearts, we know better. Recently, we witnessed the nomination process for newly appointed Supreme Court Justice Sonia Sotomayor and debated the role of empathy and the effect of bias and prejudice in our judges. We appoint most federal judges for life to relieve them of political pressure in making their decisions. Most state court judges, however, run for office and must get elected like other politicians, so the political pressure is there.

Knowing this, still we hope for judicial decisions that are fundamentally fair in the eyes of most people so that the system does not break down. We seek judicial decisions that are consistent so that we can plan our behavior into the future with some certainty. But over the years, rent-to-own issues have been treated neither fairly nor consistently by judges—whether in small claims, bankruptcy or appellate courts. There is no better evidence of this than the decisions of state supreme courts when the primary rent-to-own issue—lease vs. sale—has been presented to them. The message from these cases is clear: the courthouse can be a dangerous place for RTO dealers.

The lease-vs.-sale issue has been reviewed in five different state supreme courts over the years with mixed results. The state courts, for the most part, are analyzing rent-to-own transactions under their state RTO and credit sale statutes. The rent-to-own issue has been posed to the U.S. Supreme Court three times, but in each case, that body has declined to hear the matter, allowing the lower court decisions to stand. The industry's record in state supreme courts is mixed: three wins and two losses.

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**BY ED WINN III**



RTO *in* State Supreme Courts

## Massachusetts §

**T**he most recent rent-to-own decision, a win, came just a few months ago from the Massachusetts Supreme Judicial Court in *Silva v. Rent-A-Center Inc.* (September 10, 2009). Plaintiffs had challenged as inapplicable the 23-year-old state *Consumer Lease Act* (CLA) under which rent-to-own dealers had been operating without complaint since its enactment. The plaintiffs' claim was that the CLA only applied to rental agreements with a maximum term of four months or less and that, since the CLA does not apply to RTO transactions, the state *Retail Installation Sales Act* (RISA) should apply in order to protect consumers from the predations of the industry. (The challenge was brought by the same team of plaintiffs' lawyers that had sued the industry in New Jersey and won.)

The Massachusetts Supreme Judicial Court had little trouble in combating these arguments. The court examined the rent-to-own transactions in question in detail and concluded that, "[a]mong other things, no calculable finance charge is involved." Noting that the Massachusetts definition of "credit sale" does include certain leases, the court opined "[i]n this case, the absence of any obligation on the part of Costa [one of the plaintiffs] to pay a sum substantially equivalent to the value of the leased computer is decisive... The RTO transaction cannot qualify as a credit sale."

The court also rejected the argument that a rent-to-own transaction can turn into a credit sale when the consumer has renewed a number of times and paid enough money to justify such a recharacterization. "...[A]pplication of a regulatory framework does not depend on the economics of hindsight. We look, instead, to the nature of the contract at the time it was formed, focusing on the parties' contractual rights and obligations at that point."

Finally, the court noted that it could not rule with certainty on the applicability of the CLA to the rent-to-own transactions in question, since there were no facts in the record before the court indicating whether the rentals were "primarily for a personal, family or household purpose," as opposed to a business or commercial purpose.

The court acknowledged contrary rulings from other states—Minnesota, Wisconsin and New Jersey—but determined that the state statutes upon which those decisions

were based were materially different from the Massachusetts statutory scheme. While the decision was unanimous, one judge wrote a separate opinion urging the state legislature to consider price controls for rent-to-own transactions, noting that a significant percentage (38 percent) of consumers end up owning the property, paying what this judge deemed to be "extremely high interest rates."

## Maine §

**M**aine's was the first state supreme court to analyze rent-to-own transactions back in 1983, before there were any state rent-to-own statutes anywhere. The Maine court was reviewing an administrative decision from the superintendent of consumer credit protection and a lower court ruling, both of which had held that RTO transactions were credit sales and therefore controlled by the state's *Consumer Credit Code* (UCCC). The legal attacks were against a true "mom-and-pop" retailer. Al and Barbara Hawkes owned and operated Hawkes Television in Westbrook, Maine, one of only two stores offering rent-to-own agreements in the state. The case arose just as the industry was getting organized for the first time and the Hawkes found themselves engulfed in a legal vortex for more than two years. Early in the litigation, the superintendent issued an injunction against the Hawkes and sent out a letter to all of the Hawkes' rental customers cautioning them against paying more on their rent-to-own accounts than the retail price plus legal interest and recommending that all customers get attorneys to pursue claims against the Hawkes. The superintendent froze the Hawkes' bank accounts as part of the injunction for nearly two years. The Maine Supreme Court, when it finally got the case, dissolved the injunction as part of its ruling, but not before the costs of defense and the

decline in rental revenues—due to the adverse publicity the case generated and the superintendent's letter—drove the Hawkes out of business.

The lower court ruling had made much of the difference between the words "contract" and "agreement," and the language in the UCCC that the statute is to be "liberally construed and applied to promote its underlying purposes and policies." The Maine Supreme Court focused

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on the definitions of credit in the UCCC and concluded that the Hawkes were extending none.

“Without doing violence to the statutory language, we cannot hold that the Hawkes’ rental lessees are debtors of Hawkes in the sense of the Code [UCCC] or that Hawkes [have] extended them credit... [T]he Code definition of ‘Consumer Credit Sale’ cannot possibly bear the meaning the superintendent has assigned to it... [I]f the Hawkes’ agreements cannot come within the scope of the definitional language by any rational interpretation, the fact that the code must be given a liberal construction does not avail... The mandate for liberal construction does not give the superintendent or the courts the authority to enlarge the coverage of the statute.”

## Arkansas §

**T**he next time the rent-to-own issue made it to a state supreme court was in 1989 in Arkansas. The case, *Crumley v. Berry*, was another win for the RTO industry and received relatively little attention in the press. The Crumley court looked at two different tests for making the lease-vs.-sale distinction—a three-prong test and a five-prong test. In each, the lessee’s obligation or lack of obligation to make payments equal to the value of the goods being leased loomed large. The Arkansas Supreme Court determined that it was the threshold question to answer when considering rent-to-own transactions. With-

out an obligation to pay the purchase price for the goods, a transaction cannot be a sale. The court cited several legal commentators in support of its opinion as it could find no previous Arkansas cases precisely on point.

A dissenting judge opined that the RTO transactions were clearly credit sales because ownership transfers to the lessee/purchaser at the end of the transaction and should be governed by the state usury statute.

## Minnesota §

**I**n 1994, the Minnesota Supreme Court addressed rent-to-own with *Miller v. ColorTyme Inc.* The industry lost this case in such devastating fashion that there has been no RTO industry in that state since the decision was handed down. The plaintiff’s lawyers were even able to tag a music merchant for \$2.1 million before he could cancel his musical instrument rental program.

In 1981, the Minnesota legislature had amended the *Consumer Credit Sales Act* (CCSA) definition of “sale of goods” to include rent-to-own transactions. The industry added balloon-purchase options at the end of the maximum rental period in response. In 1990, the legislature enacted the *Rental Purchase Agreement Act* (RPAA), a comprehensive rent-to-own statute not unlike those enacted in other states at roughly the same time. Minnesota dealers thought that the rent-to-own statute, recognizing RTO

transactions as leases and regulating them as such, offered them protection and they took out the balloon-purchase options. A dealer was sued shortly thereafter. The industry lost in the trial court, but that decision was reversed in the court of appeals. When the case reached the Minnesota Supreme Court, that court reversed the court of appeals and ruled that rent-to-own transactions were both credit sales under the CCSA and RTO transactions under the RPAA. The court also ruled that rent-to-own transactions are subject to the Minnesota usury statute with an interest limit of 6 percent per year. The court held that, by law, the rental company was in violation of that statute, because the rent-to-own services were not worth much, if anything.

Instead of taking the definitions of words as given in the statute, the Minnesota Supreme Court had to tap dance around that language. “[T]he word ‘credit’ can have different meanings in different statutes and we do not believe it is appropriate to apply a narrow definition of credit in this context. The manifest purpose of the [CCSA] is consumer protection. As a remedial statute, it is entitled to a liberal construction to promote, not frustrate, its objectives.” (This case has been analyzed in some detail in the magazine previously. See *Progressive Rentals* magazine, August–September 1994, p. 26, and October–November 1995, p.18.)

## New Jersey §

**T**hen came *Perez v. Rent-A-Center*. The Minnesota Supreme Court ruling was a surprise and a disappointment, because the rent-to-own industry had worked hard and succeeded in getting comprehensive rent-to-own legislation enacted there. Such was not the case in New Jersey where, in the absence of a rent-to-own statute, there had been an unending stream of litigation brought against RTO companies beginning in 1994. The tilt of cases before *Perez*, which finally reached the New Jersey Supreme Court in 2006, was decidedly against the rent-to-own industry. The question was always whether rent-to-own transactions were disguised credit sales under the state’s *Retail Installment Sales Act* (RISA). RTO dealers had paid out tens of millions of dollars to settle lawsuits—and then came *Perez*. The industry won in the trial court. The plaintiff’s claims were dismissed. The industry won when the New Jersey Court of Appeals affirmed the lower court’s dismissal of *Perez*’s claims. However, when the case was appealed to the state supreme court, the industry lost and lost big.

The New Jersey Supreme Court examined *Perez*’s rent-to-own agreements—she was in default on five of them—and admitted that “it would be fair to say... *Perez*’s rent-to-own contracts are not a perfect fit with the words

of the statute...” But the court went on to proclaim that its mission in such circumstances was “to interpret the statute reasonably to serve its apparent legislative purpose... As such, the court is satisfied that the language of RISA was intended to cover agreements like...*Perez*’s.” Concluding that the purpose of RISA was consumer protection, the court held that rent-to-own transactions are either “conditional sales” or “similar instruments,” ignoring the specific statutory language defining certain leases as sales. The court did not care which language applied to rent-to-own transactions as long as they were covered by RISA. This court cited the *Miller* opinion from Minnesota as authority for its conclusion.

The New Jersey Supreme Court went on to hold that the state criminal usury statute, heretofore only applicable to loans of money, applied to rent-to-own transactions. In addition, the court held that the *Consumer Fraud Act* applies to rent-to-own, which statute provides for treble damages under certain circumstances.

**A**ll of these cases hinge on the supreme courts’ interpretations of their state’s statutes. There are two opposing precepts involved in statutory interpretation. There is abundant legal authority for hewing to either one. The first is the “plain-meaning rule.” Courts can interpret statutes by examining the plain meaning of the words the legislature used when enacting a given law. Alternatively, courts can interpret statute by going beyond the plain meaning and instead divine the “legislative intent” underlying the words in the statute. Whether a court uses the plain-meaning rule or looks for the legislative intent depends upon the political makeup of the court. It is, indeed, the case that “everything is political”—and that includes state supreme court decisions. The Maine, Massachusetts and Arkansas courts looked at the plain meaning of their retail installment statutes to determine that rent-to-own transactions were leases and not sales. The Minnesota and New Jersey courts opted to find the legislative intent underlying the words to conclude that rent-to-own transactions are really sales.

Same transactions. Same statutes, more or less. Opposite outcomes. We have asked for fairness and certainty from our court system. We have gotten neither. Despite the recent and notable win in Massachusetts, being in court remains a risky proposition for rent-to-own. ✱

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