STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: November 25, 2015]

SEI/AARON'S, INC., Plaintiff,	:	
v.	:	**C.A. No. PC-2013-5097**
DAVID QUINN, in his capacity as Tax Assessor for the City of Providence; and MICHAEL PEARIS, in his capacity as Finance Director for the City of Providence, Defendants.	:	

DECISION

STERN, J. Before the Court is SEI/Aaron's (Plaintiff) Motion for Summary Judgment. Plaintiff contends that David Quinn and Michael Pearis (collectively, Defendants), in their official capacities as Tax Assessor and Finance Director of the City of Providence, respectively, have illegally taxed Plaintiff by classifying Plaintiff's merchandise sold by a "rent-to-own" agreement as "leased goods" rather than "inventory." Conversely, Defendants aver that such merchandise is "leased goods." Jurisdiction is pursuant to G.L. 1956 §§ 44-5-26 and 44-5-27. For the following reasons, Plaintiff's Motion for Summary Judgment is denied.

I

Facts and Travel

The facts of the instant matter appear to be undisputed—Defendants neither oppose nor challenge the facts recited in Plaintiff's motion. Plaintiff is a retail merchant who sells household goods, such as furniture, appliances, home electronics, and personal computers (collectively, Merchandise). Pl.'s Mot. for Summ. J., Ex. A at 1. A buyer can purchase goods

from Plaintiff in three ways: (1) by cash, check, credit card, or money order; (2) "by 90 days same as cash"; and (3) by a twelve (12) month agreement, entitled Lease Purchase Agreement (the Agreement) Id. at 1-2. If a customer elects to purchase a good by the Agreement, the customer is obligated to make specified payments over a set period of time. Id. at 2. If a customer fails to make the required payments, he or she must return the Merchandise to Plaintiff. Id. at 3. Plaintiff remits to the state a state sales tax on each payment the buyer makes under the Agreement. Id.

Before a customer can purchase any Merchandise through the Agreement, he or she must read, acknowledge, sign and agree to the terms of the Agreement. See Defs.' Objection to Pl.'s Mot. for Summ. J., Ex. B at 1-2. The Agreement is two pages: the first page enumerates all the rights and obligations of the parties, and the second page is an addendum thereto. See id.

The first paragraph of the Agreement, entitled "Lease Transaction," specifies that the customer "agree[s] to lease the below items ("Leased Property") from S.E.I. ("Aaron's"). . . ." Id. at 1. It also provides that the term of the lease is one month, and that the buyer can renew the lease by timely payment of a "renewal fee." Id. If the buyer fails to make such payment, he or she must return the Merchandise to Plaintiff. Id. Below this paragraph is an area to detail specifics about the Merchandise being sold, such as item number, serial number, description, lease rate, and cash price. Id. It also contains a chart that outlines a payment schedule. Id.

The second paragraph, entitled "Purchase Option," provides that the customer "can acquire ownership of the Leased Property by making the Total No. of Payments to Own when due." Id. It further provides that the customer can change the frequency of his or her Renewal Payments at any time. Id. The following paragraph, entitled "Early Purchase Option," explains that the customer can purchase the Leased Property "at any time by paying an amount equal to

the Total Cash Price less 50% of the Lease portion of the Total Initial Payment" and all Renewal Payments made by the customer. Id. The fourth paragraph, entitled "Ownership," states that the customer "will not own nor obtain any equity interest in the Leased Property until [he or she] ha[s] either paid the Total Cost to Own or exercised [his or her] early purchase option." Id.

The fifth paragraph, entitled "Other Charges," provides that the customer could be subject to several fees, including a late charge, a returned check charge, any check verification charges, and an in-home collection charge if the customer defaults on his or her obligations. Id. Further, the sixth and seventh paragraphs, entitled "Risk of Loss and Damage" and "SERVICE PLUS," explain that the customer may be subject to several other additional charges. Id.

The eighth paragraph, entitled "Reinstatement," explains that if the customer fails to make a Renewal Payment, the Agreement will automatically terminate. Id. However, if the customer voluntarily returns the Merchandise to Plaintiff, the customer may reinstate the Agreement by making Renewal Payments and Other Charges owed to Plaintiff within 3 Renewal Terms after the expiration of the last Renewal Term. Id.

The tenth paragraph, entitled "Termination," states that the customer can terminate the Agreement without penalty at any time by "surrendering or returning the Leased Property in good repair and paying all Renewal Payments and Other Charges through the date of surrender or return." Id. However, the following paragraph, entitled "Right to Take Possession," elucidates that if the buyer does not renew the Agreement, it will automatically terminate along with the buyer's right to possess the Leased Property, and Plaintiff will be entitled to immediate possession of the Leased Property. Id. The customer will remain liable for all Renewal Payments until the Merchandise is returned to Plaintiff. Id.

The second to last paragraph, entitled "Prohibited Acts," states that the customer may not "pledge, pawn, attempt to sell or otherwise dispose of the Leased Property or move it from the address listed above without written authorization from [Plaintiff]." Id. Similarly, the last paragraph, entitled "Assignment," provides that the Plaintiff may assign or transfer the Agreement without the customer's consent. Id. Conversely, it explains that the customer may not assign his or her rights or obligations under the Agreement. Id.

At the bottom of the Agreement, there is a place for the "lessee" and a representative of Plaintiff to sign and date the document. Id. The second page of the Agreement is an addendum, which provides information pertaining to application processing, delivery, relocation, payment holidays, new agreement discounts, preferred customer coupons, and limited warranties. Id. at 2.

On July 11, 2013, Defendants sent Plaintiff a tax bill for tax years 2007 through 2013. See Pl.'s Mot. for Summ. J., Ex. C. However, Plaintiff contends that it did not maintain any stores in Providence from 2008 to 2013. As of January 2014, including interest on the 2007 through 2013 tax bills, the total amount of taxes owed to Defendants are $2,119,581.33. See Pl.'s Mot. for Summ. J., Ex. D.

Plaintiff filed a Complaint on October 10, 2013, and Defendants filed an Answer on November 4, 2013. Subsequently, on February 2, 2014, Plaintiff filed a "Motion for Relief," seeking an injunction; the motion was heard and denied by this Court on March 4, 2014. Plaintiff filed the instant motion on September 21, 2015, and Defendants objected to the motion on October 13, 2015. Plaintiff avers that Defendants have violated § 44-3-29.1 by failing to assess its Merchandise sold pursuant to the Agreement as "inventory," which is exempt from taxation under Rhode Island law, but instead have classified Plaintiff's property as "leased equipment." Plaintiff further contends that taxation of its "inventory" violates article XIII,

section 5 of the Rhode Island Constitution. Defendants respond that the Merchandise is "leased goods," which are taxable.

II

Standard of Review

In ruling upon a motion for summary judgment, the Court must "view the evidence in the light most favorable to the nonmoving party" and determine whether there exist "'genuine issues of material fact and [whether] the moving party is entitled to judgment as a matter of law.'" Bucci v. Hurd Buick Pontiac GMC Truck, LLC, 85 A.3d 1160, 1170 (R.I. 2014) (quoting Sullo v. Greenberg, 68 A.3d 404, 406 (R.I. 2013)); see Super. R. Civ. P. 56(c)[1]. The burden to avoid summary judgment "is on the nonmoving party to produce competent evidence that 'proves the existence of a disputed issue of material fact.'" Id. (quoting Sullo, 68 A.3d at 407). Summary judgment is appropriate if the nonmoving party "'fails to make a showing sufficient to establish the existence of an element essential to that party's case.'" Beauregard v. Gouin, 66 A.3d 489, 493 (R.I. 2013) (quoting Lavoie v. North East Knitting, Inc., 918 A.2d 225, 228 (R.I. 2007)). A factual dispute alone will not preclude summary judgment; "'the requirement is that there be no genuine issue of material fact.'" Bucci, 85 A.3d at 1170 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

III

Analysis

The threshold issue before the Court is whether Plaintiff's merchandise sold by the Agreement is "inventory" or "leased goods." Plaintiff makes two arguments in its motion:

[1] Rule 56(c) provides that "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law."

(1) that its Merchandise is "inventory"; and (2) that Defendants taxing its "inventory" violates article XIII, section 5 of the Rhode Island Constitution. In opposition, Defendants maintain that Plaintiff's merchandise is "leased goods" and not exempt from taxation under § 44-3-29.1; thus, taxation of such goods does not violate the Rhode Island Constitution.

A

"Inventory" or "Leased Goods"[2]

Plaintiff avers that its merchandise sold by the Agreement is "inventory" because the Agreement is a sales transaction, not a lease. Plaintiff argues that its payment structure under the Agreement is merely a financing of the purchase price and is similar to selling goods on credit. Plaintiff further maintains that if the customer defaults on the Agreement, and voluntarily returns the merchandise, he or she is not liable for remaining payments. Plaintiff states that the Agreement is employed to keep Plaintiff's options flexible in the event of a default under the Agreement; for instance, it can change payment structures and recover the merchandise. Defendants counter that the Lease Purchase Agreement is a true lease accompanied by an option to purchase, and therefore, the Merchandise is taxable. At issue before the Court is whether Plaintiff's Merchandise bought pursuant to the Agreement is "inventory" or "leased goods."

As of 2009, cities were prohibited from taxing a retailer's inventory. See § 44-3-29.1. Section 44-3-29.1 provides that "[b]eginning July 1, 1999 . . . any municipality shall, by ordinance, phase out, over a ten (10) year period, the stock in trade or inventory tax of wholesalers and retailers." However, no such law exempts "leased goods" from municipal tax. A problem arises in instances where a lease appears very similar to a sale with a reserved security interest. See 8 Hawkland UCC Series § 9-102:4 ("Unfortunately, for all practical

[2] Whether or not the merchandise is "inventory" or "leased goods" will be addressed first as it will be dispositive as to whether Defendants' actions violate the Rhode Island Constitution.

purposes, property in a lessee's hands is indistinguishable from property in a debtor's hands.). A "sale" is expressly excluded from the definition of "lease"; therefore, in determining whether the Agreement is a "lease," the Court must determine that it is not a sale.

This distinction between the two transactions is dispositive of the issues at bar. There have emerged two ways to approach a "rent-to-own" agreement in determining whether the Agreement is a "sale" or "leased goods": (1) by utilizing provisions of the UCC, or by (2) utilizing provisions of "rent-to-own" legislation. As this is a matter has yet to be presented to our Supreme Court, and for the sake of thoroughness, this Court will analyze the instant matter under the UCC and under Rhode Island's "rent-to-own" legislation.

1

The UCC

"The 'lease vs. security interest' issue will continue to be one of the most frequently litigated issues under the Uniform Commercial Code." James J. White and Robert S. Summers, Uniform Commercial Code § 30-3 at 12 (6th ed. 2015). Because the definitions of "security interest" and "lease" do not lend themselves easily to the compartmentalization of the instant transaction, this Court looks to § 6A-1-203 to distinguish between a sale and a lease. Section 6A-1-203(a)-(b) reads as follows:

> "(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
> "(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:
> "(1) [t]he original term of the lease is equal to or greater than the remaining economic life of the goods;
> "(2) [t]he lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

> "(3) [t]he lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
> "(4) [t]he lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement." (Emphasis added.)[3]

Pursuant to § 6A-1-203(b), before reaching subsections (1) through (4), the lessee must be obligated to pay the lessor for the term of the lease, and that obligation cannot be terminable. See 6A-1-203(b). In interpreting the UCC equivalent of § 6A-1-203(b), one treatise explains:

> "to the extent that the lessee has this right [to terminate the lease], the lessee is not obligated to pay the entire price of the goods and, therefore, is not, in fact, purchasing the goods. Only where the lessee is purchasing the goods can the lessor's interest be deemed to be a security interest. Where the lessee is merely purchasing the right to use the goods with the goods being returned to the lessor during their useful life, the transaction is a true lease." Lary Lawrence, Anderson on the Uniform Commercial Code § 1-203:26R at 932 (3d ed. 2004).[4]

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[3] Section 6A-1-203(c) provides several other instances in which a transaction similar to a lease will not be deemed to create a security interest. For instance, a security interest will not be created merely because the lessor is required to pay an amount substantially equal to, or greater, than the value of the goods; the lessee assumes the risk of loss for the goods; the lessee pays fees such as taxes or insurance; or the lessee has the option to renew the lease or to become the owner of the goods. See 6A-1-203(c)(1)-(4). Further, a security interest is not created simply because the lessee can renew the lease for a fixed rent that is equal to, or greater than, the reasonably predictable fair market rent for the use of the goods; or that the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the value of the goods at the time the right to purchase is being exercised. See id.

[4] A federal bankruptcy court has termed this prerequisite the "bright line" test. See In re Parker, 363 B.R. 769, 773-74 (Bankr. D.S.C. 2006). In In re Parker, the court found that agreements should not be viewed as security interests because the lessee had a meaningful right of terminating the agreement. Id. The court explained that the lessees was "under no obligation whatsoever to continue in their respective leases and they [would] suffer no penalty upon an early termination, other than, upon their voluntary election to terminate, the loss of the leased property and previously paid consideration both of which are natural consequences of the termination of a lease." Id. at 774. Other bankruptcy courts have held similarly. In In re Copeland, 238 B.R. 801 (Bankr. E.D. Ark. 1999), the court held that even though the lessee had the option to purchase the goods for $1, was responsible for taxes, insurance, maintenance, and repairs of the goods, the fact that the lessee had the right to terminate the lease at any time,

Further, another treatise states that "[a] 'lease' terminable at the will of the lessee cannot be a security agreement. Section 1-203 seems to say that." White and Summers supra, § 30-16 at 52.[5]

While Defendants request that this Court to treat the lessee's ability to terminate the Agreement as dispositive, the Court is cognizant of the explicit language of § 6A-1-203(a), which provides that a determination of whether an agreement is a lease or security interest is determined by the facts of each case. As such, the Court will engage in a factual analysis of the transactions between Plaintiff and its customers. Currently, our Supreme Court has yet to interpret § 6A-1-203(a)-(c); in fact, only two Superior Court decisions have factually applied § 6A-1-203(a)-(c). See First Portland Corp. v. Gelati, 2009 WL 3328570, at *2 (R.I. Super. June 26, 2009); Moden v. Starr Research & Dev. Corp., 1987 WL 859632, at *2 (R.I. Super. Apr. 14, 1987).[6]

In Moden, the court held that an agreement between two parties was a lease agreement rather than a sale with a reserved security interest. 1987 WL 859632, at *2. The court reasoned

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without further obligation, by itself, made it clear that it was a lease and not a sale. Additionally, in In re Yarbrough, 211 B.R. 654 (Bankr. W.D. Tenn. 1997), the court held that because a rental-purchase agreement was terminable at any time by the lessee, the transaction was a true lease.

[5] The treatise proceeds to give an example of such a situation in which a transaction is terminable at the election of the lessee:

> "A prime example of this is the 'rent-to-own' agreement where a retailer leases a television or microwave to a consumer. The lease term is usually short—two weeks or one month—and the lease is renewed automatically unless the consumer returns the goods. The consumer may purchase the goods either by continuing payments for a certain period (such as 52 weeks) or by paying fair market value (usually computed on a sliding scale, such as 60% of all remaining payments)." Id. at 52-53.

[6] The Court recognizes these decisions are not binding; they are merely persuasive. However, this Court will analyze these cases as they provide for consistent and predictable applications of a law among Superior Court decisions.

that "[t]he document consistently uses 'Lease language' to refer to the creation of a lease between the lessor and lessee." Id. Additionally, the court explained that at no time during the transaction did the lessee acquire any rights in the property "more than those rights ordinarily acquired in a lessor/lessee relationship." Id. For instance, "Clause 6" of the lease provided that the lessor retained title to the property, stating "[n]othing in this Lease shall be construed to convey to or create in Lessee any right, title or interest in or to the Equipment." Id. Further, "Clause 10" prohibited the "Lessee from assigning, pledging, transferring or hypothecating the lease, any equipment or any interest in either without the prior written consent of the Lessor." Id. Lastly, the court recognized that "[t]he lease does not contain either an option or obligation to purchase" the goods at the end of the lease term. Id.

Most recently, in First Portland Corp., the court held that several transactions were true leases based on the unequivocal language of the lease agreement. 2009 WL 3328570, at *2. In First Portland Corp., a leasing company leased a hospital several "infusion pumps." Id. at *1. The court was tasked to determine whether the "infusion pumps" were inventory of the hospital (i.e., if title passed), or leased goods from the leasing company (i.e., title did not pass). This determination would ultimately affect the tax status of the pumps. Id. The court employed § 6A-1-203 to distinguish between a sale and lease, first determining the transaction was a sale with a security interest. The court noted that § 6A-1-203(b) was satisfied because the "lessee was to pay the lessor for the right to possession and use of the goods," and the agreement contained the following provision: "[t]his lease is irrevocable by Lessee for the full term of any Schedule and for the aggregate rentals provided therein." Id. Further, the court noted that § 6A-1-203(b)(4)—that the "lessee has an option to become the owner of the goods for . . . nominal additional consideration upon compliance with the lease agreement"—has been met. Id.

However, the court still found the transaction to be a true lease because of the unequivocal language in the agreement that stated "regardless of the purchase option issued, the lease covered by this option should be construed as a true lease, and under no circumstances is it to be considered as a conditional sales contract." Id. In concluding, the court noted that "it is axiomatic that lessees do not hold title. Merely inserting one provision stating that title passes to the Hospitals does not convert a lease into a sale. This Court would be favoring form over substance if it were to so find." Id.; see Anderson, supra, at §1-203:41R ("when the lease states that the lessor reserves title . . . the transaction will typically be held to create a true lease"); see also 8 Hawkland UCC Series § 9-102:4 ("in a lease transaction, the lessor remains the 'owner' of the property; in a secured transaction, the debtor is the 'owner' with the secured party retaining only an interest in the property that secures payment of the property's price").

Here, this Court finds that § 6A-1-203(b), which is a prerequisite to a finding of a sale creating a security interest, is immediately problematic for Plaintiff. For a transaction to be a sale with a reserved security interest, § 6A-1-203(b) requires that the consideration paid under the contract must be an obligation that is not subject to termination by the lessee. See § 6A-1-203(b). The tenth paragraph of the Agreement provides that "the customer can terminate the Agreement without penalty at any time." Defs.' Objection to Pl.'s Mot. for Summ. J., Ex. B at 1. Plaintiff concedes that if the item is returned, "[t]he customer is not required to pay the remaining payments due under the Agreement." See First Portland Corp., 2009 WL 3328570, at *2 (in another Superior Court case, the judge determined that for an agreement to satisfy this requirement the agreement would require language such as: "[t]his lease is irrevocable by Lessee for the full term of any Schedule and for the aggregate rentals provided therein"). Simply put, at the lessee's option, the lessee can terminate his or her payment obligations under the Agreement.

As a result, the Court's inquiry into whether the transaction is a sale with a reserved security interest or lease can start and end with § 6A-1-203(b).

Further, turning to a factual analysis, while the Uniform Commercial Code concerns itself with substance over form, this Court notes the unfettered use of words that are typically found in a lease document. See First Portland Corp., 2009 WL 3328570, at *2; Moden, 1987 WL 859632, at *2. For instance, the buyer is referred to as a "lessee"; the merchandise is referred to as "leased property"; the document is entitled "Lease Purchase Agreement"; and the first paragraph refers to the transaction as a "lease transaction." See Defs.' Objection to Pl.'s Mot. for Summ. J., Ex. B at 1.

Further, and most importantly, Plaintiff concedes that it "reserves title to the goods until final payment is made," and that "[t]itle would pass to the renter at the time of the final rental payment." This evidences the structure of a lease. Pl.'s Mot. for Summ. J. at 8; see First Portland Corp., 2009 WL 3328570, at *2 ("it is axiomatic that lessees do not hold title"); 8 Hawkland UCC Series § 9-102:4 ("in a secured transaction, the debtor is the "owner" with the secured party retaining only an interest in the property that secures payment of the property's price."). If Plaintiff were a true secured party, and the transaction was a "sale," its customers would take title to the goods, and it would have a security interest in the Merchandise under Article 9 of the Uniform Commercial Code. See § 6A-2-106(1) (a sale requires the passing of title).

Lastly, during the period specified in the Agreement, the customer acquires no rights in the merchandise other than that ordinary in a lessor/lessee relationship. See Moden, 1987 WL 859632, at *2. For example, the second paragraph of the Agreement states that the customer "can acquire ownership." Ex. B. (Emphasis added.) It does not state that the customer is the

owner. Further, the fourth paragraph, entitled "Ownership," states that the customer "will not own nor obtain any equity interest in the Leased Property until [he or she] [has] either paid the Total Cost to Own or exercised [their] early purchase option." Ex. B; see Moden, 1987 WL 859632, at *2 (finding a lease when agreement did not give lessee any right, title or interest in the leased goods). Moreover, the last paragraph of the Agreement prohibits the customer from assigning his or her rights or obligations. See Moden, 1987 WL 859632, at *2.

In conclusion, the Court finds that Plaintiff's Merchandise is not "inventory" because it is not "on hand" and readily available for sale. Further, the Agreement is not a sale, but rather a lease, because it is terminable at will of the lessee, Plaintiff retains title to the goods, and lessee has no interest in the goods.

2

Rent-to-Own Legislation

In states that have enacted "rent-to-own" legislation, the more modern trend in determining whether a transaction is a security interest or true lease has been to apply the state's rent-to-own legislative definitions. While our Supreme Court has yet to interpret rent-to-own legislation, the Supreme Judicial Court of Massachusetts (SJC) has had the opportunity. See Silva v. Rent-a-Center, Inc., 912 N.E.2d 945, 949-50 (Mass. 2009). In Silva, the SJC answered a certified question as to whether a "rent-to-own" transaction was an installment sale, and thus governed by Massachusetts' Retail Installment Sales Act (MA RISA), or a lease governed by the Consumer Lease Act (CLA). See Silva, 912 N.E.2d at 949-50. The SJC did not analyze the transaction under the UCC, but applied the definition of "installment sale" under the MA RISA. Id. Pursuant to the MA RISA, a retail installment sales agreement includes, inter alia, the following:

> "any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of goods involved and it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option to become the owner of the goods upon full compliance with his obligations under the contract." Id. at 950 (emphasis added).

The court noted that the absence of a requirement that the lessee pay a sum substantially equivalent to or in excess of the value of the goods is "decisive." Id. at 951 (such an "agreement [does] not require (as opposed to permit) [a lessee] to pay a sum substantially equivalent to or in excess of the value of the goods involved."). A rent-to-own agreement that is terminable by the lessee at any time and without penalty cannot be deemed to require the lessee to make such payments equivalent to the value of the goods. See id. The court concluded with its holding: "a transaction structured as a lease, terminable at the will of the lessee without penalty, is not equivalent to an installment sale contract."[7] Id. at 952.

Conversely, the New Jersey Supreme Court held that its "Retail Installment Sales Act" (NJ RISA) covered rent-to-own agreements because of the legislature's intent for it to do so. Perez v. Rent-A-Center, Inc., 892 A.2d 1255, 1267-68 (N.J. 2006). In Perez, the NJ RISA statute applied to "a security agreement, chattel mortgage, conditional sales contract, or other

[7] The court noted that this logic is consistent with the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601, et seq., which defined a "credit sale" as:

> "[A]ny contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract." 15 U.S.C. § 1602 (emphasis added).

"Regulation Z [of the TILA], 12 C.F.R. § 226.2(a)(16) (2009), further explains that a credit sale includes certain leases, but not those 'terminable without penalty at any time by the consumer.'" Silva, 912 N.E.2d at 952 (emphasis added).

similar instrument and any contract for the bailment or leasing of goods by which the bailee or lessee agrees to pay as compensation a sum substantially equivalent to or in excess of the value of the goods." Id. at 1266 (emphasis added). The court explained that the rent-to-own agreement at bar did not fit squarely under the NJ RISA; however, it was similar to a conditional sale. The court concluded that the legislature's inclusion of the words "or other similar instrument" "signaled that it intended to sweep into the Act as many cognate agreements as possible, even those that did not strictly fall within a denominated category." Id. at 1268. Accordingly, as the rent-to-own agreement was similar to a conditional sale under New Jersey law, it was a "similar instrument" that fell under the NJ RISA. Id.

Similarly, Plaintiff requests that this Court adopt the reasoning of the Louisiana Court of Appeals in Easy T.V. & Appliance Rental of Louisiana v. Sec'y of Dep't of Revenue & Taxation, 556 So. 2d 100, 102 (La. Ct. App. 1990), whereby the court held a transaction to be a sale for tax purposes by looking to the legislative intent of applicable state statues. [8] Easy T.V. was a business that sold to its customers by "rent-to-own" agreements. Id. at 101. The customer was permitted to cease payment at any time by returning the merchandise to the plaintiff. Id. The appeals court noted that its inquiry "hinge[d] upon whether [it] classif[ied] the lease-purchase transactions between [plaintiff] and its customers as sales or rental agreements." Id. In examining the statutory definition of "sale," the court noted that a "sale" included a "transaction

[8] Plaintiff also urges the Court to adopt the reasoning in In re Application of Dillon Stores for Relief from a Tax Grievance in Sedgwick County, Kansas, a Kansas Board of Tax Appeals decision. While the Court has reviewed the decision, it questions its persuasive effect on the Court. Additionally, Plaintiff directs the Court's attention to Bd. of Sedgwick Cnty. Comm'rs v. Action Rent To Own, Inc., 969 P.2d 844, 852 (Kan. 1998), wherein the Kansas Supreme Court held that some capital assets can qualify for the inventory exception by looking to the legislative intent of applicable statutes. However, Action Rent To Own is distinguishable because it deals with a tax statute that is different from § 44-3-29.1. Further, as noted infra, an analysis of the General Assembly's intent yields that "rent-to-own" agreements are leases.

whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale." Id. The Court held that this sentence in the statute provided a clear legislative intent to include "rent-to-own" transactions within the definition of "sale."[9] Id. As a result, the court held that plaintiff's "rent-to-own" agreement constituted a "sale." Id.

Considering the analysis of these cases, the Court turns to the Rhode Island General Laws. Under § 44-3-29.1, the statute under which Plaintiff claims its tax-exemption, the word "Inventory" has a different definition for "retailers" and "wholesalers." Sec. 44-3-29.1(b), (c). "Inventory," as it refers to a "retailer," is "the merchandise kept on hand for sale in the normal course of business . . ."[10] Sec. 44-3-40(c). In contrast, a "lease" is a transfer "of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease." Sec. 6A-2.1-103(j). Importantly, a "sale" is expressly exempted from the definition of a "lease." See id.

Because these definitions are not easily applicable, the Court turns to Title Six, Chapter Forty-Four of the Rhode Island General Laws, entitled "The Rhode Island Rental Purchase Agreement Act" (RIRPAA). See §§ 6-44-1, et seq. The RIRPAA defines a "rental purchase agreement" as:

> "[A]n agreement for the use of property by a lessee for personal, family, or household purposes, for an initial period of four (4) months or less, that is automatically renewable with each payment after the initial period and that permits, but does not obligate, the lessee to become the owner of the property." Sec. 6-44-2(4).

[9] In Rhode Island, a "sale" is defined as "passing of title from the seller to the buyer for a price." Sec. 6A-2-106(1).

[10] "Inventory" as it relates to "retailers" is the appropriate definition as Plaintiff, in its motion, concedes that it is a "retailer."

It further provides that "[a]n agreement that complies with this chapter shall not be construed as, nor be governed by, the laws relating to: (i) 'Credit' as defined in § 6-27-3(1)[11]; (ii) A 'home solicitation sale' as defined in § 6-28-2; or (iii) A 'security interest' as defined in § 6A-1-201(37).[12]" Sec. 6-44-2(5). To comply with the chapter, there are certain written disclosures that must be made by the "lessor" or "seller" of the goods:

> "(1) A brief description or identification of the leased property, including whether the property is new or used;

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[11] Section 6-27-3(1) defines "credit" as:

> "any loan, mortgage, deed of trust, advance, or discount; any conditional sales contract; any contract to sell, or sale or contract of sale of property or services either for present or future delivery, under which part or all of the price is payable subsequent to the making of the sale or contract and the creditor imposes a finance charge; any contract or arrangement for the hire, bailment, or leasing of property in connection with which the creditor imposes a finance charge; any option, demand, lien, pledge, or other claim against or for the delivery of property or money; any purchase, or other acquisition of, or any credit upon the security of, any obligation or claim arising out of any of the foregoing; and any transaction or series of transactions having a similar purpose or effect."

[12] Section 6A-1-201(35) defines a security interest as:

> "an interest in personal property or fixtures which secures payment or performance of an obligation. 'Security interest' includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9. 'Security interest' does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 6A-2-401, but a buyer may also acquire a 'security interest' by complying with Chapter 9. Except as otherwise provided in § 6A-2-505, the right of a seller or lessor of goods under Chapter 2 or 2.1 to retain or acquire possession of the goods is not a 'security interest,' but a seller or lessor may also acquire a 'security interest' by complying with Chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 6A-2-401 is limited in effect to a reservation of a 'security interest.' Whether a transaction in the form of a lease creates a 'security interest' is determined pursuant to § 6A-1-203." (Emphasis added.)

> "(2) The amount of any payment required by the lessee at or before the execution of the lease;
> "(3) The amount paid or payable by the lessee for fees or taxes;
> "(4) The amount and description of other charges payable by the lessee and not included in the periodic payments;
> "(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term of the lease; whether or not the lessee has the option to purchase the leased property and the price at which the leased property may be purchased at the end of the lease; and the method of determining the early purchase option price at any point in time;[13]
> "(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor . . . and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;
> "(7) A brief description of insurance provided or paid for by the lessor or required of the lessee;
> "(8) The number, amount, and due dates or periods of payments under the lease and the total amount of the periodic payments; and
> "(9) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term or that no right to terminate exists and the amount or method of determining the amount of any penalty or other charge for delinquency, default, late payments, or early termination." Sec. 6-44-3(a)(1-9).

Certain transactions are exempted from the RIRPAA, including "(1) [a]greements for the rental of property in which the person who rents the property has no legal right to become the owner of the property at the end of the rental period"; (2) [a] lease of a safe deposit box; (3) [c]ommercial leases or leases entered into by an organization; (4) [any] telecommunication equipment leases or rental agreements; or (5) [a]ny automobile, truck, or any other vehicular and automotive equipment leases or rental agreement. Sec. 6-44-7.

Here, the Court finds that the Merchandise that Plaintiff sells to its customers cannot qualify as "inventory." To arrive at such a conclusion, the Court first looks to the basic

[13] The early purchase option must be clearly set forth in the rental purchase agreement. Sec. 6-44-6.

definitions of "inventory" and "leased goods." See §§ 44-3-40(c), 6A-2.1-103(j). One of the requirements for Merchandise to be "inventory" is that it must be kept "on hand for sale in the normal course of business." Sec. 44-3-40(c). Plaintiff's Merchandise, once "sold" to a customer, is no longer "on hand" or for sale. See § 44-3-40(c). In fact, when a customer takes possession of Merchandise, that Merchandise is no longer readily available for Plaintiff to sell to another customer. While Plaintiff may reobtain the item from the customer—by a customer defaulting on his or her obligations under the Agreement—the item is not "on hand" or for re-sale until that point. The Merchandise does not transform back to "inventory" until a customer defaults on his or her obligations under the Agreement.

Further, and most applicable, the Agreement by which Plaintiff sells its Merchandise seems to fit squarely within definition of a "rental purchase agreement" as defined by the RIRPAA: it is one month long, automatically renewable with each rental payment, and there is no obligation of the lessee to take title to the property upon successful completion of the Agreement. See Defs.' Objection to Pl.'s Mot. for Summ. J. at 1; see also § 6-44-2(4). Further dispositive is the fact that the Agreement makes all of the required disclosures of the RIRPAA. The Agreement describes the property by serial number, item number, condition, and description, see § 6-44-3(a)(1); proscribes an initial payment to be made by the lessee before the lease is effective, including taxes, fees, and other charges, see § 6-44-3(a)(2-4); provides the liabilities of the parties in the paragraph entitled "Risk of Loss and Damages" and the ability of the lessee to make an early purchase of the goods in the "Early Purchase Option" paragraph, see § 6-44-3(a)(5); discloses warranties and maintenance obligations of the lessee in the paragraph entitled "Maintenance and Warranty," and further in the addendum to the Agreement, see § 6-44-3(a)(6); provides the rental terms, including the number and amount of payments necessary to

satisfy the lease, see § 6-44-3(a)(8); and states that the lessee may terminate the lease at any time, without penalty, by returning the Merchandise, see § 6-44-3(a)(9). Accordingly, as the Agreement falls within the RIRPAA's definition of a "rental purchase agreement," and makes all necessary disclosures under the RIRPAA, the Court finds that the Agreement is a rental purchase agreement and it cannot be construed as "credit" or a "security interest." See § 6-44-2(5).[14]

Further, the Court finds Plaintiff's reliance on the Kansas and Louisiana courts is misplaced. While the facts of Bd. of Sedgwick Cnty. Comm'rs and Easy T.V. lend themselves well to the instant matter, the legal principles behind the courts' decisions are distinguishable. First, the proposed challenges were to tax statutes different from that of Rhode Island's inventory tax exemption. Second, and most relevant, is that each court relied upon the legislative intent of the statute at issue. See Bd. of Sedgwick Cnty. Comm'rs, 969 P.2d at 851; Easy T.V., 556 So. 2d at 102. While Rhode Island has no legislative history, there is a clear legislative intent for "rent-to-own" agreement to be considered a "lease" rather than a "sale" accompanied by a security interest. See §§ 6-44-1, et. seq. The Court's review of the RIRPAA evidences a clear intent of the General Assembly to classify a "rent-to-own" agreement as a lease.[15] Sec. 6-44-2(5). Lastly, the Court notes that in East T.V., the definition of a "sale" included instances where title would not pass from seller to buyer. However, in Rhode Island, the definition of "sale" is not that broad, and only applies to instances where title passes. See Easy T.V., 556 So. 2d at

[14] The Court notes that because the Agreement is a "rental purchase agreement" under the RIRPAA, and such agreement cannot be construed as a "security interest" as defined in § 6A-1-201(37), and such definition states "whether a transaction in the form of a lease creates a 'security interest' is determined pursuant to § 6A-1-203," an analysis under § 6A-1-203 is not needed—the analyses can be mutually exclusive in the purview of a rent-to-own agreement.

[15] The RIRPAA explicitly evidences this intent by stating "[a]n agreement that complies with this chapter shall not be construed as, nor be governed by, the laws relating to: . . . A 'security interest' as defined in § 6A-1-201(37)." Sec. 6-44-2(5).

102; see also supra, n.5. As such, the Court does not find the reasoning of Bd. of Sedgwick Cnty. Comm'rs or Easy T.V. applicable here.

In conclusion, the Court finds that the instant transaction is governed by the RIRPAA, which prevents it from being classified as a "security interest." Accordingly, the Agreement must constitute a lease.

B

Constitutional Challenge

Plaintiff avers that Defendants violated the Rhode Island Constitution because they acted in contravention of article XIII, section 5. Specifically, Plaintiff maintains that Defendants are taxing Plaintiff's "inventory" despite its tax exempt status. Article XIII, section 5 of the Rhode Island Constitution provides "[n]othing contained in this article shall be deemed to grant to any city or town the power to levy, assess and collect taxes or to borrow money, except as authorized by the general assembly."

Here, Plaintiff argues that because the General Assembly exempted "inventory" from tax in § 44-3-29.1, Defendants are violating the Constitution by taxing Plaintiff's "inventory" because it is not "authorized by the general assembly"; in fact, Plaintiff maintains that it is expressly prohibited. See R.I. Const. art. XIII, § 5. However, as the Court has found that Plaintiff's Merchandise is not "inventory," Defendants have violated neither § 44-3-29.1 nor the Rhode Island Constitution.

IV

Conclusion

Plaintiff's Merchandise is not "inventory" pursuant to § 44-3-29.1. Furthermore, the transaction between Plaintiff and its customers is a "lease" and not a "sale." As such,

Defendants are not violating the Rhode Island Constitution by taxing Plaintiff. Accordingly, Plaintiff cannot prove that it is entitled to judgment as a matter of law, and its motion for summary judgment must be denied.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	SEI/Aaron's, Inc. v. David Quinn, et al.
CASE NO:	PC 2013-5097
COURT:	Providence County Superior Court
DATE DECISION FILED:	November 25, 2015
JUSTICE/MAGISTRATE:	Stern, J.
ATTORNEYS:	
For Plaintiff:	John O. Mancini, Esq.
For Defendant:	Lisa Fries, Esq.