

EXHIBIT B

Is 'purchase, return, renewal' a scam?

Utah law allows the leases, but N.Y. court calls them 'unconscionable'

By **Lee Davidson**

Deseret Morning News

David DiCesaris looks like an all-American basketball player, which he was at California's Pomona College. With a smile and smooth speech perfected by years as a salesman, he extols a financial product called a "purchase, return or renewal," or PRR, lease.



But some call it a scam. A New York court called it "unconscionable" and ruled that law there bans it. Utah law, however, allows PRR-type leases (which go by many names and have many variations). At least four finance companies here offer them to customers nationally.

Sen. Curt Bramble, R-Provo, worries that is helping to worsen Utah's already shady reputation for business deals and may help Utah become a haven for deceptive equipment leasing practices. He is looking at ways to restrict them.

Also, state financial regulators are looking into wording used by some leasing companies that they worry might lead customers to mistakenly believe they are dealing with state-regulated banks.

DiCesaris, CEO of Utah-based Applied Financial, dismisses such criticism

and concerns. He says customers enter the leases safely without deception to gain a variety of tax, low-payment or balance-sheet benefits that PRR-type leases can offer.

Customers may use them to help finance the purchase of equipment like computers or to obtain needed cash for growing businesses by using equipment they already own (such as office furniture) in "lease-back" arrangements.

"Some of the biggest and brightest people in this country . . . have provided hundreds of millions of dollars to me to fund this business. That doesn't happen if you are engaging in deceptive business practices," he says. "These people are smart enough to ferret that out."

But many companies have filed lawsuits over the past two decades saying they were not smart enough to see traps in the fine print of such leases. At least, not at first.



Pomona College
David DiCesaris (1996), CEO of Applied Financial

Victims?

SOS Staffing Services of Salt Lake City was one of them and became an example of how a PRR can lure the unwary into possibly inescapable, expensive and perhaps perpetual leases.

Company officials did not return phone calls from the Deseret Morning News, but court documents outline what SOS said happened with a PRR-type lease from Matrix Financing, a now-defunct Utah company for which DiCesaris was executive vice president.

SOS paid \$1.8 million over four years on a lease for computer equipment. It

said the contract allowed it three options at the end of that term: purchase the equipment, return it or renew the lease.

But SOS told courts that a fine-print trap was quietly included, coupled with what the company said was careful deception by salesmen. The fine print allows purchase or return of equipment only if both parties agree on terms. Otherwise, the lease is automatically renewed for a year, and maybe perpetually if terms are never reached.

SOS said Matrix salesmen had led it to believe that any end-term purchase would be for about the depreciated value of the computers — but that was not written into the contract. The equipment was four years out-of-date at the end of the lease, so SOS figured it had little, if any, value.

SOS said it found lessors would not negotiate any buyout price, which automatically extended the lease for a year at a cost of \$350,000 for what SOS said was then-worthless equipment.

SOS told courts that action showed that Matrix had made the deal with the intent "of not negotiating in good faith . . . to extort a large payment." SOS later settled for undisclosed terms.

Another local firm that filed a similar suit was Ogden-based Flying J Oil Co. Its attorney said a settlement the company signed prevents it from commenting about the case to the press.

But Flying J said in court filings that Matrix even gave it an "assurance letter" vowing to allow it to purchase leased computer equipment at the end of term for its depreciated value — which it estimated would be about 10 percent of its original price. But that was not written into the contract itself.

At the end of the lease term, an amount four times higher than the depreciated value was demanded. When Flying J balked, managers of the Matrix lease automatically renewed it for a year at a cost of \$111,000 — and Flying J sued seeking to stop it. The parties later settled for undisclosed terms.

DiCesaris says that lawsuit occurred after he had left Matrix. He said it is indeed deceptive for anyone to give assurances that are not included in a contract — "but you can't manage every word that is said" by salesmen. He said if Flying J had brought such a problem to him when he was at Matrix, he would have tried "to make it right with the customer and . . . pray for repeat business."

Questionable roots?

Utah companies that acknowledge offering PRR-type leases now as part of

their business include Applied Financial, Varilease Finance, Tetra Finance and Mazuma Capital.

Few suits have been filed against them involving PRR-type terms. But several principals have roots in other companies — mostly now defunct — that were sued more often over them.

For example, consider DiCesaris' previously mentioned ties to Matrix Finance (the company whose tactics were called "unconscionable" by a New York court).

Applied Financial has the same address and phone number that Matrix did in Fort Union. DiCesaris said when Matrix's parent company went bankrupt, he started Applied as a new company — and hired many of Matrix's people and assumed its office lease.

For four years, DiCesaris was also a salesman with the now-notorious company Amplicon in California. A 1998 Wall Street Journal article said Amplicon pioneered PRR-type leases — and faced more than 100 lawsuits in eight years by firms claiming they had been tricked into signing misleading contracts.

"I know Amplicon has a bad reputation," DiCesaris said in an interview. He described his four years there as not "very long" and just his "first job out of college."

"Amplicon was an experience where I learned of what to do and what not to do," he said. "You do realize, when you start asking about Amplicon, it reeks of people trying to link me to this horrible situation."

SOS Staffing Services did just that in its lawsuit against Matrix and Varilease. It noted DiCesaris worked at Amplicon, and noted that company's long history of lawsuits by unhappy customers. It alleged that DiCesaris instructed his Utah-based Matrix salesmen not to draw attention to terms that could automatically renew leases.

But DiCesaris says he has always acted with integrity at Matrix, and now at Applied Financial. "I have people out there right now who would say to you Dave DiCesaris does nothing but require that we sell with complete integrity," he said.

He also said many of the lawsuits against Matrix came after he had left that company and while others outside of Matrix were managing its lease portfolio. That occurred after its parent company, UniCapital, went bankrupt. DiCesaris said later managers did not understand leases well and tried to strong-arm customers.

Among those who helped to manage the Matrix leases after the bankruptcy,

essentially as consultants without decisionmaking authority, was Varilease, said Gregory Adondakis, a Varilease vice president.

Adondakis also once was a vice president at Applied Financial (as was current Varilease senior vice president John Puglisi), and both worked at Matrix, too. Varilease Financial is now a major competitor of Applied Financial.

The SOS lawsuit, of note, also had claimed Adondakis "was trained by Matrix and David DiCesaris to not alert lessees to the implications" of the fine print that could automatically extend leases. Adondakis says he is up front with customers, and Varilease has them initial the paragraph with the controversial fine print to acknowledge they read it.

Justin Nielsen, vice president of Mazuma, said he and other principals there also previously worked at Applied and Matrix. Lon Secrist, president of Tetra, said he worked with Matrix years ago — but long before it offered PRR-type leases.

Deceptive or a deal?

Is the PRR lease deceptive, and are people tricked into signing it?

"That's ridiculous. It's in English," Adondakis said. "I don't have any Jedi mind tricks to get them not to read the contract. These are not mom-and-pop businesses we're dealing with. These are sophisticated companies who read the lease and have their attorneys read the lease. They even often change the lease."

Officials at other companies made similar statements.

"We do everything legally. We're in full disclosure," Mazuma's Nielsen said.

On the other hand, a New York court looking at PRR-type leases — in a case against Matrix by jewelry makers Andin International — ruled they are "unconscionable" because "renewal provisions make it almost impossible for a lessee to terminate its relationship with the lessor."

The court noted that New York law bans automatic lease renewals unless specific notice is given to lessees in time and with means to cancel them if they choose. Utah law has no such provisions. That may be one reason why leases offered by local companies usually require that their terms be governed by Utah law.

Matrix, in fact, argued that the New York law did not apply because Andin had agreed when it signed the lease that it would be governed by Utah law. New York courts ruled, however, that New York law applied anyway and was designed to protect against the types of abuses that it said Matrix was

attempting.

The New York court added, "The renewal provisions are so one-sided that they could support a finding of unconscionability under Utah law."

Benefits?

DiCesaris says clients sign such leases with their eyes open and do it willingly because of benefits offered.

For example, not having a fixed buyout price at the end of the lease brings up-front cash with lower monthly payments than other types of loans or leases — helping some to make needed equipment or other purchases while in tight budgets.

Also, not having a firm liability at the end of the term may allow companies not to list such obligations on balance sheets and improve the way they present their bottom line.

Sen. Bramble, a certified public accountant, says that is among concerns he has about PRR leases — that they might allow deceptive bottom lines for companies.

DiCesaris said about his company's philosophy, "We say we'll give you this (low monthly) payment — if you give us this extension. We've had a lot of success with that approach."

James Christensen, president of Applied Financial (and once an attorney for Matrix), adds that often because of low payments during the regular lease term, "Applied Financial gets less than 100 percent of its money back. So the 12-month extension is necessary just to come out of this even." He and DiCesaris say clients realize that, despite some lawsuits to the contrary.

DiCesaris also says the current lease language proposed by Applied Financial allows either party to terminate extensions (after at least one initial 12-month-or-so renewal) by written notice, so "it is not a perpetual lease."

DiCesaris said that while he has been at Applied, it has been sued only a couple times over PRR language "out of more than 800 leases over five and a half years," and he said those few suits resulted from prodding by disgruntled ex-employees.

Secrist with Tetra said it has never been sued over PRR-type extension provisions by customers in the 10 years or so that it has offered them.

Scott Scharman, executive vice president of Tetra, added, "You'll find more litigation with what you would deem a traditional fair-market value lease than

you would with what we deem a closed-end lease," a variation of a PRR.

It can be a lucrative business for those involved. A lawsuit by Applied against a former sales director, Thomas Panuzio (whom Applied claimed had taken company contact lists with him when he jumped ship to rival Varilease) said he had been paid more than \$300,000 a year.

Also, property records show DiCesaris owns a Park City home valued at about \$1 million.

Legislative remedy?

Controversy about PRR-type leases concerns Sen. Bramble. He said he has received enough complaints about customers being tricked or from those who worry it could tarnish Utah's business reputation that he is looking seriously at legislation to reign in any bad actors.

"Everything is on the table," he said about possible reforms, including a New York-style ban on automatic lease extensions or even beginning state regulation of the leasing industry.

He said that only a small number of leasing companies appear to be bad actors, "but it appears that Utah is a haven for them."

During the past legislative session, he introduced a bill on the topic — but it had no text besides a title: "Regulation of Unconscionable Provisions in Purchase, Renew and Return-type Leases."

He said that sent a message that he is looking into the issue, and he has since been talking with a wide range of affected interests.

"The difficulty comes when a sophisticated lessor uses some of these problematic provisions to take an unsophisticated lessee for a ride," he said.

Still, he said traditionally the government passes consumer protection laws only to protect individuals from unscrupulous companies — while companies and their lawyers are supposed to have the expertise to read fine print and protect themselves.

For that reason, Scharman with Tetra is worried about Bramble's actions.

"Legislating sophisticated parties in free enterprises is an absolute slippery slope. . . . It will dry up liquidity to middle-market companies that need it and can't go to their local bank and get what they need. And that doesn't do anybody any good."

Nielsen with Mazuma said a bill could hurt Utah companies as they compete with out-of-state leasing companies. "If legislation were to handcuff Utah leasing and finance companies (on terms they could offer) . . . then all of the sudden Utah companies are put at a disadvantage, which doesn't seem right."

DiCesaris said Applied Financial would actually applaud a New York-style ban on automatic lease renewals, and action against those who may promise anything that is not included in a contract. He said legislation should target deceptive practices, and not PRR-type language itself.

In part because of Bramble's action, the leasing firms said they are in the process of forming an association to lobby on the issue, to better explain how the industry works and outline what best practices in the industry should be.

'Lease bankers'?

State financial regulators also say they are concerned about the practice by some leasing companies that call themselves "lease bankers," or say they offer "lease banking." Critics say that could build false confidence in customers who erroneously assume they are working with a bank that is regulated by the state.

Applied Financial bills itself as "first in lease banking," and even says it has a trademark for the term "lease banking." Varilease Finance's parent company has a wholly owned subsidiary called "BancLeasing" based in Texas.

What is "lease banking"?

DiCesaris said the term means "you're going to sell with integrity," and it helps convey the feeling that his company is interested in forming long-term relationships with customers.

The company also notes on its Web page that it has an "association" with Republic Bank, a state-regulated industrial bank. What does that mean? "We have a preferential funding relationship with Republic Bank," DiCesaris said.

Adondakis said BancLeasing works with smaller community banks that do not have leasing arms, which large banks (like Wells Fargo or Zions) do. He said he does not believe it uses PRR-type leases.

Bramble worries about leasing companies using such wording. "For example, I am a CPA. That means something. People cannot claim they are a CPA if they have not passed the proper tests and obtained a license. But they are claiming to be lease bankers."

Ed Leary, commissioner of the Utah Department of Financial Regulation, said, "If (nonbanks) are representing themselves to be lease bankers, use of that term would be troublesome to us." He adds he did not know of such usage until

contacted by the Deseret Morning News.

He said his department would investigate any reports of companies using such terms, and if they are nonbanks he likely will order them to cease using it. However, he notes he may not have power over subsidiaries based in other states that use such terms in their names.

DiCesaris, meanwhile, said he plans to meet with Leary and to stop use of such wording if it is a problem. "We don't want to break the law," he said.