New York Automatic Renewal Law

General Obligations (GOB), Article 5, Title 9, Sections 5-901 & 5-903

Title 9 - REQUIREMENTS OF NOTICE FOR EFFECTIVENESS OR ENFORCEABILITY

§ 5-901. Certain provisions of leases of personal property inoperative unless notice thereof given to lessee. No provision of a lease of any personal property which states that the term thereof shall be deemed renewed for a specified additional period unless the lessee gives notice to the lessor of his intention to release the property at the expiration of such term, shall be operative unless the lessor, at least fifteen days and not more than thirty days previous to the time specified for the furnishing of such notice to him, shall give to the lessee written notice, served personally or by mail, calling the attention of the lessee to the existence of such provision in the lease. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

§ 5-903. Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to recipient of services.

1. As used in this section, "person" means an individual, firm, company, partnership or corporation.

2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, served personally or by certified mail, calling the attention of that person to the existence of such provision in the contract.

3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

Are automatic lease renewal provisions enforceable in NY?

STATUES/CASES:
Many leases of personal property typically contain an automatic renewal provision that provides, in effect, that the lease or contract will automatically renew for a specified term unless the lessee sends notice of its intention not to renew prior to the lease expiration. In NY, such provisions are not enforceable unless the lessor sends by certified mail, or serves personally, written notice of the renewal provision to the lessee which must be received at least 15, but no more than 30, days

prior to the time the lessee is required to give notice of its intention not to renew (unless the renewal period is one month or less). General Obligations Law § 5-901

COMMENTS:
The same rule applies in New York for automatic renewal provisions of contracts for service, maintenance or repair. General Obligations Law § 5- 903. At least one trial-level court in New York has ruled that a lessor cannot avoid the impact of New York's notice requirement by use of a choice of law provision in their lease documents. See Andin International v. Matrix Funding Corp., 194 Misc.2d 719, 756 N.Y.S.2d 724 (NY County Sup. Ct. 2003)(notwithstanding a Utah choice of law clause in an equipment lease agreement, the trial court stated that the NY notice statute is applicable" [i]n view of the public policy purpose behind the section"). In the case of Ovitz v. Bloomberg L.P., over a strenuous dissent, the lessor/service provider dodged a bullet and was successful in having a class-action complaint dismissed on the pleadings, notwithstanding that the plaintiff had clearly alleged that the lessor/service provider had violated the New York statutes. Ovitz v. Bloomberg L.P., 18 N.Y.3d 753, 944 N.Y.S.2d 725 (2012). In Ovitz, the complaint alleged that the original term of the lease/service contract expired in 2002 and that the defendant did not send the statutorily required notice of automatic renewal. The plaintiff continued to use and pay for the equipment and services until 2008, at which time he notified the defendant that he wished to terminate. However, the defendant responded by advising the plaintiff that the lease/service agreement had automatically renewed to 2010. After an exchange of email between the parties and unsuccessful demands by the defendant for payment, the plaintiff filed a class-action complaint against defendant, alleging various statutory and common-law claims, and seeking declaratory and injunctive relief, in addition to other relief. Two weeks after suit was filed, defendant waived all fees "as an accommodation" to plaintiff. After several years of litigation, the case was dismissed, primarily because the plaintiff had not paid for any services it did not receive and thus no monetary damages were suffered. In effect, the court held "no harm, no foul". There was a strenuous dissent to the decision, however, which stressed the defendant's alleged admission that it was its "policy" not to send renewal notices and to then vigorously pursue its lessees to collect unenforceable fees. In the dissent's view, the "no harm, no foul" approach was inappropriate and the case should have been allowed to proceed, given the plaintiff's allegation that the putative class members "are entitled to injunctive relief necessary to ensure that Bloomberg's 'illegal, unfair and deceptive conduct will not continue into the future'".