

[Subcommittee on Article 2A – Leasing](#)

Teresa Davidson, Chair

LEAF FUNDING, INC. v. CUSTOM HIGHLINE, L.L.C.  
Mitigation Evidence Relevant to Liquidated Damages Claim

The court in this case concludes that summary judgment for damages is not appropriate in a breach of contract claim regarding a lease under Article 2A where the lease had a liquidated damages clause but the formula did not include the “usual” offset for proceeds upon disposition.

In *Leaf Funding, Inc. v. Custom Highline, L.L.C., et al.*, Slip Copy, 2008 WL 4305316 (D. Kan. September 18, 2008), Custom Highline, L.L.C. (“Lessee”) leased equipment from Leaf Funding, Inc. (as assignee of Five Point Capital, Inc.) (“Leaf”) for a period of 60 months with monthly payments. Custom Highline Wholesale, L.L.C. (“Custom Wholesale”) and two individuals, Zarif Haque (“Haque”) and David Rueschoff (“Rueschoff”) guaranteed the lease. Less than a year into the lease Lessee defaulted and Leaf filed a claim against Lessee and the guarantors for \$103,990.48 plus interest at 18% per annum, plus reasonable collection costs and attorney fees and possession of the equipment. Of the four defendants, only Rueschoff answered the complaint. The court granted a default judgement against the three non-answering defendants as to liability, but because Rueschoff and the three were admittedly jointly and severally liable, default judgment could not be granted on the amount of damages against the three until the matter was adjudicated against Rueschoff. So, the court turned to Leaf’s motion for summary judgment against Rueschoff for breach of contract.

Rueschoff did not dispute that the elements of breach of contract existed -(1) existence of a contract between the parties; (2) sufficient consideration to support the contract (3) plaintiff’s performance, (4) defendants’ breach of the contract and (5) damages to plaintiff caused by the breach.

Rueschoff, however, asserted that because Leaf did not mitigate its damages, Rueschoff had the right to raise a defense of failure to mitigate and “discover what, if anything, Leaf Funding has done to mitigate its rent damages.” Thus, in this motion for summary judgment, the issue for the court became, as a matter of law, is evidence of mitigation relevant to the issue of damages in this lease context?

Leaf argued that just by virtue of the lease in question being a true lease and not a security agreement, there was no requirement under the California Commercial Code to mitigate if the contract did not provide for it. The Court rejected this argument finding no support for it. Similarly, the Court rejected Leaf’s argument that since the lease agreement was silent on the issue of mitigation, there was no duty to mitigate. It recognized that Article 2A of the California Commercial Code permitted formula-based liquidated damages upon breach but also noted that the formula used in the subject lease agreement lacked the “usual” offset for net proceeds of disposition, citing Comments to Section 2A-504.

The Court then turned to the doctrine of mitigation under California common law which in part holds,

