

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>XEROX CORPORATION,</b>	<b>: No. 01-01,840</b>
	<b>:</b>
<b>Plaintiff</b>	<b>:</b>
	<b>:</b>
<b>vs.</b>	<b>: CIVIL ACTION - LAW</b>
<b>DAVID SEARLES, Individually</b>	<b>:</b>
<b>And as a partner trading and</b>	<b>:</b>
<b>Doing business as MINUTEMAN</b>	<b>:</b>
<b>PRESS and trading and doing</b>	<b>:</b>
<b>Business as QUICK COPY</b>	<b>: Verdict after Non-Jury Trial</b>
<b>Defendant</b>	<b>:</b>

**VERDICT**

AND NOW, this day of October 2002, after a non-jury trial in the above-captioned matter, it is ORDERED and DIRECTED as follows:

1. The Court finds in favor of Plaintiff and against Defendant on Count 1 of the Amended Complaint. The Court awards Plaintiff the following sums: \$83,104.48 as the outstanding principal from the Settlement Agreement and \$9,141.49 in interest at the rate of 6% from October 17, 2000 until the date of this order. Although paragraph 8 of the Settlement Agreement (Plaintiff's Exhibit 1) provides for the payment of reasonable attorney fees by Defendant, Plaintiff provided no evidence regarding attorney fees at trial.<sup>1</sup> Therefore, the Court will not award attorney fees.

Defendant requested a set-off because he returned two of the machines that were subject to the Settlement Agreement to Plaintiff's sales agent.

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<sup>1</sup> While Plaintiff's counsel mentioned during his opening statement there as an agreement between his

The Court rejects Defendant's request. Neither the Settlement Agreement nor the Sales/Maintenance Agreement contains a provision for the return or trade-in of the 5750 and Fiery equipment. Rather, the Settlement Agreement contemplates Defendant purchasing the equipment pursuant to the terms of the Agreement. If Xerox executes on the machines or otherwise accepts them in partial satisfaction of the judgment, it shall give Defendant appropriate credit.<sup>2</sup>

2. The Court finds in favor of Plaintiff and against Defendant on Count II of Plaintiff's Amended Complaint. Although Great American Leasing is listed in the billing information at the top of the Sales/Maintenance Agreement (Plaintiff's Exhibit 2), the agreement was between Dave Copenhaver, as the sales agent of Plaintiff, and Defendant. Therefore, the Court rejects Defendant's assertion that Plaintiff cannot enforce this agreement. The Court awards Plaintiff \$45,333.04 as the outstanding principal due under the Sales/Maintenance Agreement and \$1,426 in interest at the rate of 6% from January 14, 2002 to the date of this Order.

By The Court,

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Kenneth D. Brown, J.

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firm and Xerox for attorney fees equal to 25% of the amount recovered, opening statements are not evidence.

<sup>2</sup> The Court also notes that the Settlement Agreement was entered two years ago. There is no evidence in the record of the machines' current value or their value when they allegedly were given to Plaintiff's sales agent approximately 1 year ago. Defendant admitted using the machines at least until the DCC50 copier was delivered on or about August 29, 2001. It would not be fair to credit Defendant with the value of the machines in October 2000 when he put another year of use on them.