

MARKS & WEINBERG, P.C.

C.F. Garcia Enterprises, Inc. v. Enterprise Ford Tractor, Inc. 480 SE.2d 497 (Va. , 1997)

Lessee entered into a "lease" for a backhoe which entitled the lessee to purchase the backhoe for \$1 at the end of the lease term. After making all the required lease payments, lessee retained possession of the backhoe without tendering the \$1 or notifying the lessor of its intent to exercise the purchase option.

The lessor repossessed the backhoe, sold it without notice to the lessee and kept the proceeds. Lessee sued claiming breach of contract, conversion and violations of Virginia's Uniform Commercial Code (U.C.C.). The court concluded that the lease was a security agreement under the U.C.C. because it provided the lessee the option to purchase the backhoe for nominal consideration. It further found that even though the lessee had breached the contract by failing to exercise the option according to the terms of the agreement and had defaulted on the lease by making late payments, the lessee was still entitled to damages for lessor's failure to conduct the sale in a commercially reasonable manner.

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