

MARKS & WEINBERG, P.C.

E. Spire Communications, Inc. v. CIT Communications Finance Corp.

2002 WL 1343463 (Bankr. D.Del)

When determining whether an agreement is a true lease or a disguised security interest, courts apply state law. Under New Jersey law, adopting U.C.C. 1-201(37), a transaction creates a security interest if the consideration of the lessee is to pay the lessor for the right to possession and use of the goods, is an obligation for the term of the lease, is not subject to termination by lessee, and (a) the original term of the lease is equal to or greater than the remaining economic life of the goods, (b) the lessee is bound to renew the lease for the remaining economic life of the goods, (c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal consideration upon compliance with the lease agreement, or (d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

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