

MARKS & WEINBERG, P.C.

Fox v. Snap-On Credit Corporation

229 B.R. 160 (N.D. Ohio 1998)

David Fox, the Debtor, leased two pieces of air-conditioning equipment from Patrick Hurley, the Defendant. The terms of the purported lease provided that (1) at the end of the lease term, the Debtor could become the owner of the equipment by paying a "Buyout Charge" of \$1.00, and (2) if the Debtor canceled or otherwise terminated the lease before the expiration of the 48 month lease term, the Debtor would become immediately liable for the total outstanding balance remaining on the equipment lease. When the Debtor became unable to pay the monthly payments, it returned the equipment to the Defendant. The Defendant applied the fair market value of the equipment to the total amount due under the terms of the lease, and demanded the remaining \$6,212.39. Shortly thereafter, the Debtor filed for Bankruptcy under Title 7. The appointed trustee sought to set aside, as a preferential transfer, the Debtor's post-default return of leased equipment to the Defendant.

The Defendant moved for summary judgment. After reviewing the transaction, the Court concluded that, under Ohio law, the arrangement constituted a security interest rather than a true lease because the Debtor could not cancel the "lease agreement" without becoming liable for the total cost of the equipment and the Debtor had the option to purchase the equipment at the end of the lease term for the nominal sum of \$1.00. Because the transaction was a security interest and not a lease, the Defendant, in order to



protect its interest in a bankruptcy proceeding against the Trustee's avoiding powers under §544(a), was required to properly perfect its security interest. Under Ohio law, the Defendant had failed to comply with the procedures for perfecting a security agreement as it only filed its security interest centrally instead of locally *and* centrally. Thus, the Defendant was a general unsecured creditor. The pre-petition transfer, then, was a preference under the Bankruptcy Code, as it allowed the Defendant to receive more than it otherwise would have in a hypothetical Chapter 7 distribution.

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