

MARKS & WEINBERG, P.C.

In Re Circuit-Wise, Inc.

277 B.R. 460 (D. Conn. 2002), April 23, 2002.

The Debtor filed a voluntary Chapter 11 bankruptcy petition. Wells Fargo asserted that the Debtor entered into a lease and had not made any payments under the lease since filing the petition for bankruptcy. Wells Fargo filed a motion with the bankruptcy court pursuant to the protections of Bankruptcy Code § 365(d)(10) asserting that the Debtor must pay all amounts due under the lease until Lessee assumed or rejected the Lease or until the court ordered otherwise.

The Debtor responded to the motion asserting that the lease was not a true or bona fide lease agreement and was, instead, a loan. Debtor argued that the lease was not entitled to protection under Section 365(d)(10) until and unless the court ruled that the lease was true or bona fide.

The court found that Bankruptcy Code § 365(d)(10) distinguishes between a lease and a security agreement and only protects a lessor, not the mere holder of a security interest under a loan or "lease intended as security." The court determined that a true or bona fide lease must first exist to award the protection of Section 365(d)(10). Since the status of the Lease as a "true Lease" or a "loan" was in dispute, the creditor was not entitled to protections of an unexpired lease assumption and rejection provision until and unless the court determined that the lease was true or a bona fide lease.



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