

MARKS & WEINBERG, P.C.

In Re Kim

232 B.R. 324 (E.D. Penn. 1999)

In this case, Hamilton Leasing Company sought relief from the automatic stay pursuant to § 362(d) of the U.S. Bankruptcy Code, 11 U.S.C. § 101-1330 with respect to certain personal property in the possession of Debtor Jisun Kim. The property, most of which was used in the operation of a dry cleaning business, was in Kim's possession pursuant to a document captioned "Equipment Lease". In their answer to Hamilton's motion for relief from the stay, the Debtors challenged the nature of the transaction by asserting that the lease was not a true lease, but rather a disguised security agreement.

After extensive analysis of the "Lease Agreement", the court concluded that the agreement was a disguised security agreement since: (a) the agreement was, by its own terms, "non-cancelable" by the Lessee during the lease term; and (b) a separate Option Contract satisfied the elements of a contract and granted the Debtors an option to buy the equipment at the end of the lease for the nominal sum of \$1.00.

Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit leaselawyer.com or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

