

MARKS & WEINBERG, P.C.

J.B. Walter Construction, Inc. v. Futronics, Inc. 2000 WL 5911 (Ohio Ct. App.)

A construction company (the "Company") contracted with Futronics to provide a basic radio relay service to be employed in conjunction with mobile radios used to contact the construction company's employees on the job site. The Company leased these radios, through a lease agreement with Lease Corporation of America, until December of 1995. The radios never worked properly, so Futronics told the company that it needed a tower. Installation of the tower eliminated the need for the radio relay service, so the company terminated the service contract in March of 1995. In May of 1995, the company returned the mobile radios to Futronics for servicing.

The company, believing it was in the process of purchasing the radios, continued to make payments to Lease Corporation of America until May of 1996. Futronics, however, continuously refused to return the radios, and the company sued Futronics to recover damages under a theory of conversion. The court stated that a claim of conversion requires the plaintiff to prove by a preponderance of the evidence that the defendant "wrongfully exercised dominion and control over property in exclusion of or inconsistent with the plaintiff's rights." Futronics' defense was that the company had no ownership rights in the radios. The trial court ruled against Futronics and the appellate court affirmed. The court stated that "[o]ne who has possession of chattel or who is entitled to immediate possession of a chattel may maintain an action against a person who allegedly



converted the chattel.ö Additionally, because the cause of action was rooted in the tort of conversion and not based upon the contract between the parties, the service agreement, which expressly excluded consequential damages, was irrelevant to the disposition of the case. The court granted consequential damages.

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.

