

# MARKS & WEINBERG, P.C.

## **Tokai Financial Services v. Mathews, Gallovic, Granito & Co.**

1995 WL 803582 (Oh. App., 1995)

In a case decided under pre-UCC 2A law, but which might have reached the same result even under current law, lessor is denied its full damages upon lessee's default because it failed to mitigate damages. Mitigation of damages required under Ohio law, and under the express terms of the Tokai lease form, required the lessor to attempt to sell or re-lease the equipment after repossession, giving the lessee the benefit. This was a pre-condition to lessor's accelerating rentals.

Tokai did not attempt to mitigate damages and apparently did not introduce evidence explaining why (the court might have listened had lessor shown at trial that it was unsuccessful despite reasonable efforts to obtain a new lessee or purchaser). Most commentators believe that, because of the specific language of UCC 2A (1) mitigation will be required unless the lease provides a reasonable alternative means of calculating damages and (2) mitigation will not be required if the lease contains an express waiver by the lessee of the duty to mitigate damages. The situation may be less clear in states where mitigation was required by common law, such as Ohio, but a carefully-worded lease is always the best protection.



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