

# MARKS & WEINBERG, P.C.

## Winthrop Resources Corp. v. B. Dalton Booksellers, Inc.

2002 WL 76374 (Minn. App. 2002)

In addition to containing an interesting discussion of the legal doctrine of anticipatory repudiation, this case provides a few nice examples of problems that can arise when aggrieved parties try to ride out disputed leases.

B. Dalton Booksellers, Inc. ("Lessee") leased computer equipment from Winthrop Resources Corporation ("Lessor") under multiple schedules. When a dispute arose as to the existence of a purchase option, Lessee and Lessor settled the resulting lawsuit by having Lessee purchase some of the equipment and continue leasing the rest. When Lessee notified Lessor of its intention to return the equipment, Lessor claimed that all returned equipment would have to be identified by serial number, that it would not accept return of equipment without such identification and that the lease would continue to renew until Lessee complied with the foregoing requirements.

In a second suit, the Court found for Lessee, holding that the lease did not require serial number identification and that Lessor breached its obligations under the terms of the lease by failing to accept return of the equipment. After this holding, Lessee retained the equipment and made several more payments under the leases before stopping payments altogether (without giving a termination notice).



Lessee argued that Lessor's previous refusal to accept return of equipment without serial-number-identification constituted an anticipatory repudiation which relieved Lessee of its obligations under the lease until receipt from Lessor of adequate assurances that Lessor would accept the equipment. The Court rejected this argument, holding that there was already a binding judicial determination that serial number identification was not required and that Lessee therefore had no legal basis to be concerned with whether Lessor would accept return. In other words, the Court's earlier ruling regarding serial number identification and the Lessee's ability to enforce that ruling through judicial process severely outweighed any uncertainty that would result if Lessor still refused to accept return. Under similar reasoning, the Court held that Lessee did not have reasonable grounds for insecurity about Lessor's accepting return of the equipment and therefore was not entitled to adequate assurances from Lessor.

Moreover, the Court held that Lessee's payment of rent, after Lessor was found to be in breach for failing to accept return of the equipment, resulted in its waiving that breach. The Court therefore held Lessee liable for rent until it gave the proper end of term notice and returned the equipment. The court also held that Lessor was not liable for any failure to mitigate Lessee's damages since both parties had equal control over damages and since "there is authority that Lessor need not repossess goods to satisfy the duty to mitigate."

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](http://leaselawyer.com) or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

