

MARKS & WEINBERG, P.C.

AGFA Corp. v. Tavares, No. 00-17417, 2002 WL 116920, Ninth Circuit Court of Appeals, May 31, 2002.<BR.

The Lessor filed a complaint after the Lessee ceased making payments for the term of the lease agreement. The Lessee did not respond to the complaint, and the Lessor moved for a default judgment. The District Court, however, dismissed the Lessor's complaint as deficient because the complaint did not provide information about the residual value or resale of the equipment. Massachusetts law governed the contract, and the Ninth Circuit reversed the dismissal because in Massachusetts the Lessor is not required to repossess the equipment and resell it to mitigate damages. Instead, the Lessor may sue to recover the price of the equipment. The Lessor's complaint was not deficient. Furthermore, even though the Lessor did, in fact, repossess and resell the equipment after filing its complaint and before the court issued its report, the District Court should have granted default judgment and reduced the damages accordingly.

