

# MARKS & WEINBERG, P.C.

## American Steel Product v. Emery, 203 B.R. 504 (Bankr. S.D. Ga. 1996)

In this unusual case, the lease is found to be a disguised security agreement for a number of reasons. Notably, however, the court cites with favor *In Re Murray*, 191 B.R. 309 (Bankr. E.D. Pa. 1996) Aff'd 201 B.R. 381 (E.D. Pa. 1996). That case held that the fact that the lessee could terminate the lease during the term by paying a termination value indicated that the lease was not a disguised security interest under UCC §1-201(37).

In *Emery*, the lessee had the right to buy the equipment from the "lessor" by paying fair market value during the term. Other arrangements between the parties, however, led the bankruptcy court to hold that the agreement was actually intended as a security agreement. Unfortunately, the "lessor" never bothered to file a UCC-1 and therefore became unperfected.

