

MARKS & WEINBERG, P.C.

BankVest Capital Corporation

270 B.R. 541(Bcy. Mass. 12/11/01)

LESSEES BEWARE: The lessees in this computer lease case signed Acceptance Certificates before their equipment was delivered. When the deliveries were delayed, the lessor arranged for loaner equipment to be temporarily placed with the lessees.

Before the leased equipment could be delivered and substituted for the loaners, the lessee went into Chapter 11. In a case that relies heavily on an interpretation of §365(b)(2)(D), the court held that the failure to deliver the correct equipment was a non-monetary default which did NOT require cure by the debtor in order to assume the lease. The lessees are, presumably, stuck with the loaner equipment for the full term of the lease.

MESSAGE: Never, ever, ever sign an Acceptance Certificate before the proper equipment is delivered and fully inspected.

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