

MARKS & WEINBERG, P.C.

Estate of Zubicki v. Rutherford

537 N.W. 2d 559 (N.D., 1995)

The Supreme Court of North Dakota, applying Florida law, held that a sale/leaseback agreement covering business equipment and inventory was not a lease governed by U.C.C. Article 2A, but was intended to create a security interest governed by U.C.C. article 9.

Since the lessor had not filed a financing statement, perfecting this interest, a subsequent creditor had priority over the inventory and equipment. There were two keys to the court's decision. First, inventory was covered by the agreement. Since inventory by its nature is intended for resale, it cannot be the subject of a lease, which contemplates the property being returned at the end of the term. Second, after-acquired property was covered by the agreement. A present lease cannot cover property not within the contemplation of the parties at the time of agreement.

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