

# MARKS & WEINBERG, P.C.

## Gateway Bank & Trust v. Timms

577 S.E.2d 15 (Ga. App. 2003)

This case reinforces something all prudent leasing companies already know--- when you repossess leased equipment, make sure you get the right equipment. Phillip Hatfield (the "Borrower") financed the purchase of a Nolan flatbed trailer with Gateway Bank & Trust (the "Bank"). After the Borrower defaulted, the Bank seized a trailer from an auction lot that it believed to be the trailer financed by the Borrower. Although placed on the lot by the Borrower, other evidence tended to show that the trailer seized from the lot by the Bank was actually a different trailer belonging to the Borrower's mother, Linda Timms. When Timms contacted the Bank to notify them of the mistake, the Bank's vice-president rudely referred her to the Bank's attorneys. Had the Bank given the trailer back to Timms, it might have avoided punitive or other damages outlined below.

In response to the Bank's refusal to address this mistake, Timms sued the Bank in a trover action, claiming that the Bank had wrongfully repossessed her trailer. A jury not only forced the Bank to return the trailer to Timms but also required the Bank to pay her compensatory damages for the fair rental value of the trailer for the time it was in the Bank's possession. Timms was also awarded punitive damages and attorneys fees. The Georgia Court of Appeals affirmed, reasoning that the award was justified by the Bank's "entire want of care" and "bad faith" failure to attempt to identify the trailer's rightful owner before and after seizing it.



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.

