

# MARKS & WEINBERG, P.C.

## **In re Eagle Enterprises, Inc.**

39 UCC Rep. Sen.2d 534 (7/2000)

The alleged equipment "lessor" United Container Services (Deutschland) ("United Container") moved to have equipment returned. The Bankruptcy Court entered an order denying the motion on the ground that the contracts in question were not "true leases" but disguised "security agreements." On appeal, United Container argued that the Bankruptcy Court erred in applying Pennsylvania law in determining that certain contracts between it and the debtor styled as "purchase - lease agreements" were in fact disguised sales and not true leases.

United Container contended that the "lease agreements" contained choice of law provisions indicating that they would be governed by German law, which would treat the agreements as true leases. United Container argued that the bankruptcy court's holding gives creditors who never examined a debtor's lease "license to in good faith extend debt assuming that the debtor owns the property" and that the bankruptcy court's opinion requires lessors to conclude that they must always file UCC financial statements to perfect security interest in leased property "even when they and their lessee never intend for their lease to convey title or be anything other than a true lease." Finally, United Container argued that the bankruptcy court's holding allows any creditor or bankruptcy trustee to attach any lease transaction.



The appeals court noted that it is one thing for a creditor or trustee to "attach a lease transaction" in bankruptcy proceedings but quite another to do so successfully. The court further noted that under any governing law, when parties enter into a "lease agreement" for a fixed time which can not be terminated and which offers the "lessee" an "offer to purchase" the equipment at the end of the "lease term" for the token consideration of one dollar, the "lessor" quite clearly contemplates passing title to the "lessee." The equipment is clearly collateral.

The court stated that the fact that United Container and the debtors argued that German law would govern disputes between them does not prejudice the rights under United States bankruptcy law of appellee who never agreed to the choice of law provision.

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.

