

MARKS & WEINBERG, P.C.

In Re Sho-Me Nutraceuticals, Inc. 319 B.R. 273 (Bankr. MD Fla. 2005)

Sho-Me arose as a motion for relief from automatic stay filed by CIT, a creditor. CIT leased equipment to Matco, a company that was in negotiations with Sho-Me for acquisition or merger. CIT filed a financing statement showing Matco as debtor. Because the companies were in negotiations, the equipment was delivered to Sho-Me, not Matco. At all relevant times the equipment was located at Sho-Me. Additionally, Sho-Me made all the payments, and in 2003, after the merger never materialized, the president of Sho-Me asked CIT about paying off the lease.

CIT argued that it should be relieved from the automatic stay because Sho-Me only had a mere possessory interest in the equipment, which is not protected by the stay. The court disagreed. After calling this a "classic picture of how not to structure an ordinary commercial transaction," the court held that Sho-Me was a de facto lessee. Based on the fact that the equipment was never delivered to Matco and Sho-Me was the only party to make payments on the lease, the court concluded that CIT had acknowledged Sho-Me as a de facto lessee. Therefore, CIT had a duty to protect its interest by filing a financing statement against Sho-Me. CIT chose not to make such a filing and because it did not have a validly perfected security interest, its motion for relief from the automatic stay was denied.



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