

# MARKS & WEINBERG, P.C.

## State v. Higby

899 So. 2d 1269 (Fla. App. 2005)

Higby was charged by the State of Florida with violating Florida Statute § 812.155(3). The statute makes it a felony for a person who leases property valued at \$300 or more to ÷without the consent of the [Lessor] and with the intent to defraud, abandon or willfully refuse to redeliver such personal property as agreed.ö Under subsection (4)(b) of that statute, a party can provide prima facie evidence of fraudulent intent required by proving that such property is not redelivered after a demand to redeliver is sent by certified mail.

It should be noted that this statute does not differentiate between consumer and commercial lending. In this particular case, the court held that §812.155(4)(b) creates a permissive inference of fraudulent intent, and not a mandatory presumption, and therefore the statute is not facially unconstitutional as a violation of the due process clauses of the United States or Florida Constitutions.

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