

# MARKS & WEINBERG, P.C.

## State v. Larson

605 N.W.2d 706 (Minn. 2000)

From 1992 ó 1995, Larson owned Southwest Leasing (hereinafter “SW Leasing”), an automobile and equipment leasing business. “During this 3 year period, . . . [SW Leasing was kept afloat financially] despite heavy financial difficulties, at least in part, by not refunding security deposits to customers and not paying to the state the sales tax from lease buyouts.” At trial, Larson argued that he could not be convicted of theft because “security deposits are not the property of another for purposes of the theft statute.” Larson alleged that the security deposits were merely debts and not property giving rise to criminal charges for deprivation. Larson’s argument was rejected and he was convicted for theft ó temporary taking and for failure to pay over state funds. The court of appeals upheld Larson’s conviction on both counts.

“One element of theft ó temporary taking is that the property in question must have been the “property of another.” The Supreme Court of Minnesota reversed the trial court and the court of appeals on both counts. The Supreme Court of Minnesota held that security deposits are not the property of the debtor but are merely the representation of debts to be repaid in the future. Furthermore, the Supreme Court of Minnesota held that the existence of a fiduciary duty with regard to the use of the security deposit funds must be proven “for voluntarily transferred funds to qualify as the “property of another” under the theft ó temporary taking statute.” The court found that the state did not meet its burden



of proving that Larson had a fiduciary duty to his customers in this case. Therefore, Larson could not be convicted under a criminal statute for theft because nonpayment of debt is not criminally punishable . . .

The Supreme Court of Minnesota also reversed the conviction against Larson for nonpayment of sales tax to the state because it found that based upon the history of the statute that Larson was convicted under that statute was not intended to be applied to automobile salesmen.

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.

