

Collector Car Storage

Don't Leave It To Chance

Like most car collectors, you probably take excellent care of your beloved vehicle. You polish it, feed it the best appropriate fuel, and repair or install quality replacement parts when necessary. You may garage it, perhaps cover it, and maybe even only take it out in nice weather.

But are you storing your car in a location or under conditions in which you risk losing it due to a legal matter? It pays to take a close look at your current storage situation, particularly if you are keeping your car on someone else's property. And if you find out that there might be a problem, don't put off doing something about it, because time may be of the essence. These are the lessons of this month's case, *Anderson vs. Mogenson*, decided on February 23, 1999, by the Court of Appeals of Wisconsin.

According to the Court, William Anderson purchased two Chevrolet Corvairs, one in 1967 and another in 1991. Over the last several years, he stored the Corvairs on the property of the nearby Walter Brewery. Anderson had done some architectural work for the brewery's previous owners in exchange for storing the Corvairs there. In April 1997, the brewery went into foreclosure, and John Mogenson was appointed receiver. In September 1997, a judgment of foreclosure was granted. By a December 11, 1997, order, the sale was confirmed, Mogenson was terminated as receiver and was authorized to dispose of any unclaimed personal property on the premises. Mogenson thereafter gave the Corvairs to Allen Sopiartz in exchange for cleaning garbage and other debris from the brewery. The cars remained on the brewery premises.

Anderson knew in June or July 1997 that Mogenson had been appointed receiver and that the property was in foreclosure. However, the first time Anderson contacted Mogenson to seek return of his vehicles was at some point after December 11, 1997. Thus, the first notice Mogenson had of Anderson's claim was after the date the sale of the brewery was confirmed.


Anderson filed a complaint against Mogenson in small claims court for "replevin," seeking return of the Corvairs. Mogenson filed a counterclaim for storage fees if the court ordered replevin. The trial court concluded that Mogenson had "transferred ownership" of the Corvairs to Sopiartz and dismissed both actions. Anderson appealed.

The Court of Appeals reversed the judgment of the trial

court, concluding that the lower court erred by dismissing Anderson's complaint. It remanded (sent back) the case to the trial court for further proceedings.

The appellate court agreed with Anderson's argument that he was entitled to (and was denied by the lower court) the protections of a Wisconsin statute addressing the disposition of "unclaimed property." The statute provided: "When any property is not perishable or subject to decay and is not claimed and taken away within one year after it was received, it may be sold as follows: The person in whose custody the property is, or the person's agent or attorney, may make an affidavit of the facts and present the same to a judge or court commissioner of the county in which the property is located and such judge or court commissioner shall immediately issue an order requiring the sheriff or any constable of the county to sell the property at public auction, giving 60 days' notice of the time and place of the sale to the consignor, the consignee, and the custodian of the property. This notice shall be in writing and served personally or by mail upon the persons whose names and residences are known."

The Court agreed with Anderson's argument that the brewery acted as a warehouse keeper (thus making the statute applicable) when it stored his Corvairs in consideration for his architectural services. Even though the brewery owners were not regularly engaged in the business of storing goods for hire, they were similar to a furrier which, in a prior case had been found to be a "warehouseman" in connection with the storage of a customer's coat.

It further concluded that even without the protection of the statute, Anderson's replevin action should not have been dismissed. "Replevin is a possessory action to obtain actual possession of the subject matter.... The plaintiff must have the right to possession when the replevin action is commenced.... Prior possession and a wrongful taking are sufficient to maintain replevin.... The trial court concluded that Sopiartz owns the vehicles, but the record reflects that Anderson has the titles to both Corvairs. Wisconsin places great emphasis on certificates of title as evidence of ownership of a motor vehicle.... The record contains no evidence of any transfer of title from Anderson to Mogenson or Sopiartz. Indeed, the trial court's discussion of ownership does not address who has title to the Corvairs, but focuses on physical possession. Moreover, Mogenson acknowledged that he has not yet given Sopiartz the vehicles, and the trial court found that the vehicles are still on the premises. Thus, its finding that Sopiartz owns the Corvairs is clearly erroneous because there is no evidence that Sopiartz has possession of, or more significantly, legal title to, the Corvairs." 

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