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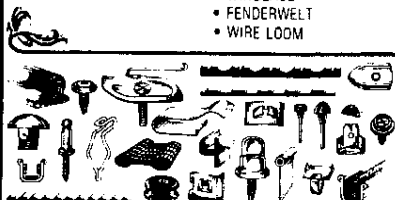
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## OLD CARS IN LAW

### THE CASE OF THE WRONGFUL REPOSSESSION

LAWRENCE SAVELL

It is often said — although I have no idea of the origin — that "possession is nine-tenths of the law." However, when that possession results from a wrongful repossession, the law will protect the rights of the party whose possession has been violated.

The case of *Jones v. Petty* demonstrated this principle.

On December 23, 1987, Bobbie Jones purchased a 1956 Chevrolet Bel Air from Gary Petty. Ms. Jones paid \$400 of the \$950 purchase price and agreed to pay the balance in weekly installments of \$75. Ms. Jones paid Mr. Petty \$75 and an additional \$40 on January 13, 1988, \$100 on January 16, and \$75 on January 23, leaving a balance of \$260 owed to Mr. Petty.

Because of mechanical problems with the Bel Air, Ms. Jones was unable to operate the vehicle beyond April or May of 1988. She thereafter parked it in her front yard without tags and with two of its tires removed.

On August 2, 1988, Ms. Jones reported to the police that the car was missing. Inside the vehicle at the time of its disappearance were tools, a cassette radio player, booster cables, and a sweater.

Subsequently, Ms. Jones discovered the Bel Air on Mr. Petty's property. Mr. Petty claimed to have found the vehicle abandoned on Interstate 20 sometime after August 1. He subsequently sold the vehicle to a third party.

Ms. Jones sued Mr. Petty, alleging that he had wrongfully repossessed her car. She sought \$2287 in damages, including \$1000 for the vehicle, \$287 for the property in the vehicle at the time of the repossession, and \$1000 for "embarrassment and humiliation." She also sought costs and attorney's fees.

At trial, the court ruled for Ms. Jones, awarding her \$600 in damages plus interest and \$500 in attorney's fees.

Ms. Jones appealed, arguing that she should have received a greater award. Mr. Petty, who represented himself, filed a brief asserting that he had neither seized nor repossessed the vehicle from Ms. Jones.

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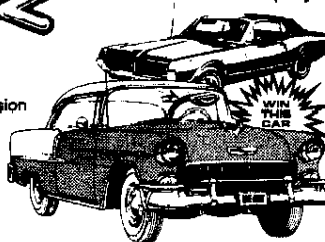
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The appellate court noted that, when goods are repossessed without court involvement, to avoid legal liability the seizing creditor must demonstrate that the debtor consented to such repossession. The court noted that a default in payment by the debtor does not justify such repossession without resort to proper legal process unless the debtor voluntarily consents to the repossession. The reposessor has the burden of proving such consent was given.

The court further observed that an award of damages for property located in a vehicle at the time of a wrongful repossession is appropriate. The court concluded that the \$287 value pled by Ms. Jones was reasonable.

Finally, the appellate court noted that, under Louisiana's Unfair Trade Practices and Consumer Protection Law, the victim of a wrongful repossession is entitled to attorney's fees. The court concluded that an award of \$1000 was reasonable.

Although the laws of other jurisdictions may vary, the lesson of the *Jones* case is clear: repossession, if wrongful, can subject a creditor to liability potentially far greater than the amount sought to be recovered by that repossession.

*Lawrence Savell is an attorney and writer in New York City. This column provides general information and is not intended as a substitute for consulting a lawyer.*

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