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.

On April 3, 1991, the Court of Appeal of Louisiana, Second Circuit, ruled in favor of Ms. Jones.

The appellate court observed that, although Mr. Petty contended that he had not repossessed the vehicle, the trial court had determined otherwise. A trial court's reasonable evaluations of credibility and inferences of fact are seldom disturbed on appeal. The appellate court pointed out that Mr. Petty's actions in seizing and selling the Bel Air clearly demonstrated his intention of regaining ownership. This fact, coupled with the fact that Ms. Jones had not completed making payments on the vehicle, strongly suggested to the appellate court that a repossession had taken place.

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 repossessor has the burden of proving such consent was given.

Mr. Petty, however, never claimed to have obtained the consent of Ms. Jones. Indeed, he denied knowing where to locate her. Thus, the appellate court upheld the finding that Mr. Petty was liable to Ms. Jones for the wrongful repossession.

The appellate court then turned to Ms. Jones' argument that the amount of damages awarded was insufficient. The appellate court agreed.

The court noted that the measure of damages for the wrongful seizure of property is the value of that property. Although the parties had agreed to a purchase price of $950, the court ruled that no evidence of the market value of the car at the time of seizure had been presented. Where there is no evidence of the market value of the property at the time of the seizure, a court may look to the amount paid. Thus, the appellate court awarded Ms. Jones the $690 she had paid Mr. Petty.

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.

The court additionally noted that "general damages" may be awarded for a debtor's embarrassment, humiliation, or inconvenience resulting from a wrongful seizure. However, although Ms. Jones had experienced some inconvenience, she had not been deprived of the use of the vehicle, since it was inoperable at the time. The court thus awarded her nominal general damages of $200.

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.