

MARKS & WEINBERG, P.C.

Callaway v. Whittenton 52 UCC Rep.Serv.2d 52 (Ala. 2003)

A recent edition of dispatches from the trenches discussed lessor's rights to repossess leased equipment as long as they do so without "breaching the peace." This case involves that same subject and shows what happens to trespass and wrongful repossession claims when a repo-man runs over the debtor's foot and kills his cat.

Christopher Callaway ("Purchaser") purchased a vehicle from Summerdale Budget Auto & Truck, Inc. ("Budget") and financed the vehicle through Baldwin Finance. The relevant documentation gave both Budget and Baldwin Finance the right to repossess the vehicle in the event of default. The Purchaser failed to make his October payment and Baldwin hired Whittenton, an independent contractor, to repossess the vehicle.

Though the facts were disputed, Purchaser alleged that as Whittenton began driving his tow-truck out of the Purchaser's driveway with the repossessed vehicle attached, Purchaser began banging on the truck and yelling to get Whittenton's attention. Purchaser then grabbed the roll bar of the vehicle and hung on as the vehicle rolled over his foot and dragged him down the driveway. To make matters worse, Whittenton ran over the Purchaser's cat too. The Purchaser sued Whittenton, Budget, and Lender, alleging, among other things, trespass and wrongful repossession. The trial court granted



Whittenton's motion for judgment as a matter of law on the trespass and wrongful repossession claims and the Purchaser appealed.

The Alabama Supreme Court noted that a secured party may repossess collateral without judicial process if it proceeds without breach of the peace. Having entered the property for the purpose of repossession, Whittenton, as agent for a secured creditor, entered as a matter of right under Alabama law and therefore the Court affirmed the trial court's judgment as a matter of law on the trespass claim.

Addressing the wrongful repossession claim, the Court stated the legal requirement that the repossession occur "without breach of the peace" necessarily means that it must be "without risk of injury to the secured party, the debtor, or any innocent bystanders." The Court, in viewing the evidence most favorable to the Purchaser, stated they had presented sufficient evidence from which a jury could conclude that a breach of the peace occurred and reversed the judgment as a matter of law on the wrongful repossession claim.

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