



### **Reverse Repossession; Debtor's Right to Recover Vehicle in Bankruptcy**

A recent opinion from the U.S. Circuit Court of Appeals for the Seventh Circuit ("Court") that does not relate to banking reminded me of an opinion from a few years ago by the same Court that *does* apply, and so I am revisiting that 2009 ruling here.

The very recent (non-bank) case involved vehicles seized and held by the City of Chicago following unpaid traffic citations. The issue was whether the City had to surrender possession of the car back to the owner after the owner filed bankruptcy. The Court answered that question "Yes," because the automatic stay protections of the bankruptcy laws prevent a person or entity from seizing or exercising control over an asset belonging to the bankruptcy estate.

As I mentioned above, the City of Chicago vehicle impound case reminded me of the ten year old (May, 2009) case of Thompson vs. General Motors Acceptance Corporation. Just as in the recent City of Chicago impound case, the Court ruled that a debtor whose car had been repossessed by a lender (GMAC) was entitled to unconditional recovery of the vehicle upon request once (s)he had filed bankruptcy, and it was immaterial whether the BK was Chapter 7, Chapter 11, or Chapter 13. The Bankruptcy Code forbids a creditor to "exercise control" over a debtor's asset after the debtor has filed, and the first issue easily resolved by the Court was whether the mere passive act of housing/impounding the vehicle constituted the exercise of control. The Court found that of course the deprivation of the use of the car by its owner was functionally the exercise of control over the vehicle.

The Court reasoned that one of the principal functions of bankruptcy is to allow the debtor to re-establish herself/himself financially, and use of her/his automobile would likely be a necessary part of maintaining or finding employment.

A second, and more arguable, issue that the Court had to address was the Bankruptcy Code's requirement that a secured creditor be "adequately protected" when possession of an asset is surrendered back to the bankrupt debtor. The lender (in this case, GMAC) claimed that it was the debtor's obligation to tender adequate protection of the lender's interest in the collateral before the debtor was entitled to possession. Unfortunately, the Court sided with precedents from other federal Circuit Courts of Appeal that had ruled the asset was first and unconditionally to be returned to the

debtor, and then it was the secured party's obligation to go to court and seek "adequate protection" via a court order.

Thus, in both the City of Chicago case decided in August of this year and the GMAC case ten years earlier, the rule of thumb is that a debtor in bankruptcy is entitled to unconditional recovery of a repossessed vehicle that is in the custody of a creditor, and the burden is on the creditor to protect its interest in the collateral through the expense of petitioning a court.

***The description of the outcomes of the two cases referenced in this column are for informational purposes only, and do not represent any legal advice or recommendation as to any course of action that a bank should, or should not, take in a specific situation. Any actual dispute between a bank and a debtor regarding collateral, in a bankruptcy scenario or otherwise, calls for the consultation with, and reliance on, actual legal advice from the bank's own attorney.***

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