

SELF-HELP **EXAMPLES** **A Quiz for Our Readers**



The following three examples of self-help repossession are loosely based upon actual cases. Analyze each example in order to test your understanding of the concept of the prohibited self-help repossession "under color of law." Your editor's comments on each example follow, but we suggest you make your own assessment of each example prior to reading these.

EXAMPLE ONE:

Your debtor in default is an exterminator by profession, and your collateral is his exterminator's truck, complete with a huge replica of a cockroach projecting from the roof. Although you doubt the resale market for such collateral, you must nonetheless take some action to collect the account due to the absence of voluntary payment.

Your repossession agent, dressed in her usual wrecker driver's uniform, finds the fantastically decorated vehicle that serves as your collateral parked in the driveway of the debtor's girlfriend.

As your repossession agent proceeds to hook up the exterminator's truck to her wrecker, the debtor himself

charges out into the front yard and requests to know just what is going on. Your fearless agent reaches into her coat and pulls out an official looking document, which she waves in the face of the debtor without allowing him time to read it. "I have an order here for the repossession of this vehicle. Evidently you are in default on the loan."

Your debtor grimaces, but stands quietly in the front yard as the repossession agent successfully pulls away with the vehicle.

Query: Is this a repossession "under color of law?"

EXAMPLE TWO:

You are a banker in a small town and your brother-in-law happens to be a deputy sheriff in the same locality. A long time bank customer has been in default on an installment loan secured by a garbage truck.

Because your customer is no longer returning your phone calls, you decide to take matters into your own hands and go out to the location of his business. The garbage truck is parked within a fenced lot at your customer's office location within the town, and you go into the office to request that he surrender the keys to the truck.

Without surrendering the keys, he walks out with you into the lot to the location of the truck itself. At that very moment, your brother-in-law, Deputy Drywall, happens to pull up across the street in his county sheriff's cruiser. You and your customer are facing him, clad in his resplendent deputy sheriff's uniform of light cocoa hue, as he steps

out of his car and stands at a distance comprising the width of the two lane street plus an additional 20 feet.

Your customer turns to the good deputy and yells out loud, "He's here to take my truck because I haven't made the payments! Does he have a right to do this?"

Deputy Drywall, always a fan of Gary Cooper and therefore inclined to be sparing in his use of verbiage, simply nods his head in a manner clearly perceptible across the street where you are standing with your debtor. Your debtor then reaches into his pocket, hands you the key, and walks

back into his office in high dudgeon, but without speaking another word. Your brother-in-law drives off in his cruiser, and you drive off in your newly repossessed garbage truck without further incident.

Query: Is this a repossession "under color of law?"

EXAMPLE THREE:

The finance company for which you work has a debtor in default on a car loan who happens to be an employee of the United States Air Force and who lives on the local military base. In accord with your company's policies, after four months pass without an installment payment, you send a repossession agent to pick up the car.

When your repossession agent arrives at the base, he is accompanied by an armed security police sergeant and successfully accomplishes the repossession. The police sergeant accompanies him due to established base policy meant

to insure the repossession's protection. The base will not allow any deviation from this practice. Although your debtor is present at the repossession, she makes no protest of any kind.

Query: Is this a repossession "under color of law?"

Editor's Comment on Example One:

The repossession is merely wearing a wrecker driver's uniform, garb which should be clearly distinguishable in most cases from that of a law enforcement officer. Additionally, her assertion that she has "an order" is true enough in that you have ordered the repossession of the vehicle. In the actual case known to your editor, the debtor eventually dropped his suit for wrongful repossession. He evidently recognized it as a bad case, and so it was never litigated. Had the wrecker driver said that she had a "court order," however, then the repossession would look a lot more as if it were done "under color of law."

Editor's Comment on Example Two:

As you have probably already surmised, the mere appearance of the uniformed law enforcement officer, although coincidental, and not requested in advance by the creditor, is problematical already. His affirmative nod to the irate debtor, however, seems to move this repossession closer to the category of one "under color of law." The actual case from which this example was drawn was much clearer: the deputy's presence was requested in advance by the creditor, and was clearly in connection with the repos-

session itself. The creditor in our example might possibly argue to the court that the coincidental arrival of the deputy had nothing to do with the repossession, and the deputy would not have even been involved except for the debtor's asking him for his opinion of the relative rights of the parties. A court might nevertheless rule that under the circumstances the mere presence of the deputy allowed the successful repossession despite the opposition of the debtor, and therefore constituted a breach of the peace.

Editor's Comment on Example Three:

The basic facts of this example are the subject of a published decision. The court in question held that despite the fact that the presence of the armed security police sergeant was required by the base, and was not at the request of the repossession agent or the creditor, that it nonetheless made the repossession wrongful and constituted a due process violation. □

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