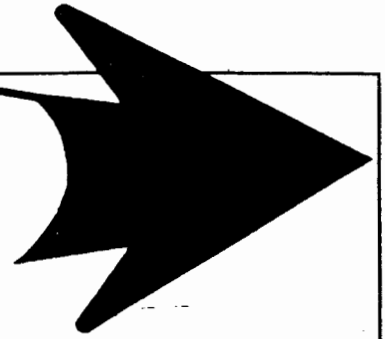


THE ARROW

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SELF HELP – THE PEACE BREACHED



The use of self help repossession by a creditor possessing a security interest in the goods to be repossessed is still a valid creditor's remedy and is specifically authorized by statute. See KRS 355.9-503, which reads in relevant part as follows:

"Unless otherwise agreed, a secured party has on default a right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action."

Self help repossession really takes two forms. The first is simply obtaining the debtor's consent to the repos-

session of the goods in question. Such voluntary surrenders are by far the most common form of repossession practiced by secured creditors throughout the nation.

The second form of self help, as opposed to judicial repossession, consists in obtaining the goods without the debtor's voluntary surrender thereof, but short of an actual breach of the peace. The most typical example of such repossession is the taking of a delinquent debtor's unoccupied car from a public street. In major metropolitan areas in our country, a repossession agent can earn a fairly good living by seeking out and stealing away with the vehicles of defaulting debtors. Tools of this trade range from the fully equipped wrecker truck to the automobile entry device known as a "slim jim."

The greatest difficulty faced by creditors employing the self help method of repossession arises when the recalcitrant debtor happens upon the scene of the repossession and does not merely want to hand over his car keys to the

creditor's repossessing agent. The legal issue involved in the subsequent lawsuit is frequently just what type of action by the creditor or the creditor's agent constitutes a "breach of the peace."

The repossession of a car from the debtor's driveway has generally been held a proper repossession, but what if the noise of the wrecker wakes up the sleeping debtor and his or her family, who proceed to run out on the front porch, turn on the porch light, and shout various rude phrases at the offending wrecker driver? What if the neighbors on either side are also awakened?

In addition, consider the case of a debtor who simply walks up to the repossessing creditor and demands that he get off the debtor's property and leave the vehicle as well.

The aforesaid examples certainly fall short of what we ordinarily consider a "breach of the peace," and involve no actual fisticuffs or drawn weapons, but they are nonetheless very real problems for the repossessing creditor.

We advise our clients that the safest guideline to

follow in self help repossession is to discontinue the repossession effort when met with an "unequivocal oral protest" from the debtor. In other words, if the debtor protests against the repossession in clear, unmistakable language, the repossession efforts should cease, lest the creditor incur damages from a repossession deemed wrongful by the courts.

The "unequivocal oral protest" standard should be applied to the repossession process regardless of where the repossession is attempted — that is, whether at the debtor's residence, the driveway of the debtor, or that of a debtor's relatives, or in the public thoroughfare.

In the real world, a creditor attempting self help who already has the debtor's vehicle hooked up to the wrecker will naturally be disinclined to release the vehicle back to the debtor just because the aforesaid delinquent happens upon the scene and demands the automobile. After all, the creditor would not be there if the debtor was not already in default and in breach of the finance contract, and the creditor by this time has already incurred repossession expenses. In some cases, the creditor may have been looking for the vehicle in question for months in advance of finding it. We sympathize with the creditor in this situation, and can only advise what result is to be expected if the case ever goes to court. The debtor's mere unambiguous demand on the scene for the vehicle back, if the creditor persists in the repossession, will result in an adverse decision from a court correctly following current precedents in this regard.

In our next issue of The Arrow, it is our intention to address another problem which surfaces with self help repossessions--proceeding "under color of law." □

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