

CHRYSLER CREDIT CORPORATION v. KOONTZ

APPELLATE COURT OF ILLINOIS, 1996
214 ILL. DEC. 726, 661 N.E.2D 1171

FACTS Defendant James Koontz agreed to purchase a 1988 Plymouth Sundance from Chrysler Credit Corporation ("Chrysler") in exchange for 60 payments of \$185.92. Koontz defaulted in early 1991, and Chrysler notified Koontz that, unless he made the payments, it would repossess the vehicle. Koontz responded by notifying Chrysler that he would make every effort to make up

missed payments, that he did not want the car repossessed, and that Chrysler was not to enter his private property to repossess the vehicle. On the night of April 21, 1991, Chrysler sent the M & M Agency to repossess the vehicle.

Koontz, dressed only in his underwear, came outside and yelled, "Don't take it!" The reposessor ignored him and took the car anyway. Koontz did not physically challenge

or threaten the reposessor. Chrysler sold the car and filed a complaint to recover the balance remaining on the loan. Koontz defended on the ground that Chrysler breached the peace in repossessing the car and thus was not entitled to a deficiency judgment. The trial court entered judgment for Chrysler, and Koontz appealed.

DECISION Judgment affirmed.

OPINION We recognize that the self-help repossession statute extends a conditional self-help privilege to secured parties; however, we must apply the statute in a way that reduces the risk to the public associated with extrajudicial conflict resolution. It is apparent that the self-help remedy is efficient for secured creditors and results in reduced costs for both creditors and debtors. Efficiency and reduced litigation costs are desirable. Still, a debtor's private property interests and society's interest in tranquility must also be protected.

***The key to whether a self-help repossession is permissible depends on whether the peace has been or is likely to be breached.

Section 9-503 [Revised 9-609] does not define breach of the peace, and the phrase "breach of the peace" has never had a precise meaning in relation to specific conduct. ***

We therefore conclude that the term "breach of the peace" connotes conduct which incites or is likely to incite immediate public turbulence, or which leads to or is likely to lead to an immediate loss of public order and tranquility. Violent conduct is not a necessary element. The probability of violence at the time of or immediately prior to the repossession is sufficient. We now turn to Koontz's contention that Chrysler's repossession and the events at the time of and immediately prior to the repossession breached the peace.

After a thorough examination of the record, we find no abuse of discretion on the part of the trial court in ruling that Chrysler's repossession did not breach the peace. Whether a given act provokes a breach of the peace depends upon the accompanying circumstances of each particular case. In this case, Koontz testified that he only yelled, "Don't take it," and that the reposessor made no verbal or physical response. He also testified that although he was close enough to the reposessor to run over and get into a fight, he elected not to because he was in his underwear.

Furthermore, there was no evidence in the record that Koontz implied violence at the time of or immediately prior to the repossession by holding a weapon, clenching a fist, or even vehemently arguing toe-to-toe with the reposessor so that a reasonable reposessor would understand that violence was likely to ensue if he continued with the vehicle repossession. We think that the evidence, viewed as

a whole, could lead a reasonable fact finder to determine that the circumstances of the repossession did not amount to a breach of the peace.

We note that to rule otherwise would be to invite the ridiculous situation whereby a debtor could avoid a deficiency judgment by merely stepping out of his house and yelling once at a nonresponsive reposessor. Such a narrow definition of the conduct necessary to breach the peace would, we think, render the self-help repossession statute useless. Therefore, we reject Koontz's invitation to define "an unequivocal oral protest," without more, as a breach of the peace.

Koontz also argues that Chrysler breached the peace by repossessing the vehicle under circumstances which would constitute a Class C misdemeanor, criminal trespass to real property.***

In making this analysis, certain principles are clear and must be considered. When the collateral is located inside a fence or is otherwise enclosed, the secured creditor's privilege is considerably abridged. [Citation.] The creditor's privilege is most severely restricted when repossession can only be accomplished by the actual breaking or destruction of barriers designed to exclude trespassers. [Citations.] ***

In this case, Koontz testified that he notified Chrysler prior to the repossession that it was not permitted to enter onto his property. He also testified that he pulled his vehicle into his front yard so that he could see it by the light of the front porch. This testimony was uncontroverted. There was no testimony, however, that Chrysler entered through any barricade or did anything other than simply enter onto the property and drive the car away. Viewing this evidence in the light most favorable to the prevailing party, we believe that Chrysler's entry upon the private real property of Koontz and taking possession of the secured collateral, without more, did not constitute a breach of the peace. Chrysler enjoyed a limited privilege to enter Koontz's property for the sole and exclusive purpose of effecting the repossession. So long as the entry was limited in purpose (repossession), and so long as no gates, barricades, doors, enclosures, buildings, or chains were breached or cut, no breach of the peace occurred by virtue of the entry onto his property.

INTERPRETATION A secured party may take possession of the collateral on default without judicial process if it can be done without a breach of the peace.

ETHICAL QUESTION Did the court fairly decide this case? Explain.

CRITICAL THINKING QUESTION Why is it important for creditors to have the right to repossess? Explain.