UNIFORM COMMERCIAL CODE

DUTY TO AVOID BREACH OF THE PEACE IS NON-DELEGABLE

REPOSSESSION DID NOT BREACH THE PEACE

Chapa v. Traciers & Assoc., Inc., 267 S.W.3d 386 (Tex. App. – Houston [14th Dist.] 2008).

FACTS: Ford Motor Credit Corp. ("FMCC") hired Traciers & Associates, Inc. to repossess a white 2002 Ford Expedition owned by Marissa Chapa, who was in default on the promissory note. Traciers directed its field manager, Paul Chambers, to conduct the repossession and gave Chambers an address for Marissa. FMCC, Traciers, and Chambers were unaware the address actually belonged to Marissa's brother, Carlos Chapa, who owned a similar white 2003 Ford Expedition. Carlos and his wife, Maria Chapa ("Chapa"), were not in default on their loan. Chambers investigated the address, observed Chapas' white 2003 Ford Expedition, noted the license plate numbers did not match, but could not see the Expedition's vehicle identification number. Maria Chapa loaded her children into the Expedition. Maria left the keys in the ignition with the engine running while she re-entered the house. Chambers towed the vehicle onto an adjacent street before realizing the Expedition's engine was running. Chambers stopped, noticed the children inside, and returned the Expedition. When Maria returned outside and discovered her children were missing, she called 911 and notified her husband.

Chapas filed suit against FMCC, Traciers, and Chambers for mental anguish, arising from an alleged breach of the peace caused by Chambers while attempting repossession. The trial court found the repossession did not breach the peace and granted summary judgment against the Chapas. Chapas appealed.

HOLDING: Affirmed.

REASONING: In order for Chapas to recover against FMCC and Traciers for mental anguish suffered, they had to establish a breach of the peace occurred. The court examined the breach of the peace elements, both from a criminal law standpoint, as well as from a U.C.C. standpoint. Under Texas criminal law, a breach of the peace includes all violations of the public peace or order. The court recognized this is a broad definition, and whether a specific act constitutes a breach of the peace depends on the surrounding facts and circumstances in the particular case. It was undisputed that Chambers did not behave violently or threaten physical injury to anyone. It was also undisputed Chambers did not know the children were in the vehicle when he towed it. Based on the facts of this case, the court found Chambers' conduct did not breach the peace under criminal or common law.

Under Texas criminal law, a breach of the peace includes all violations of the public peace or order.

UCC specifically addresses breach of the peace concerning repossession of property, referring to conduct which leads or is likely to lead to an immediate loss of public order and tranquility. The court found no evidence Chambers met with any objections while attempting to repossess the vehicle. To the contrary, Chambers ceased repossession as soon as he learned of the presence of the children. The court found further evidence Chambers was attempting to avoid confrontation by removing a seemingly unoccupied vehicle from a public street when the driver was not present. For these reasons, the court held Chambers's conduct did not breach the peace in violation of UCC and affirmed the summary judgment of the lower court.

MISCELLANEOUS

U.S. SUPREME COURT REJECTS FEDERAL PREEMPTION

Wyeth v. Levine, 129 S. Ct.1187 (2009).

FACTS: Levine developed gangrene and doctors amputated her arm, after the drug Phenergan was administered to her via the IV-push method. This method involves the drug being injected directly into the vein of the patient. Levine brought a state-law damages action against Wyeth, a manufacturer of Phenergan. Levine alleged Wyeth failed to provide an adequate warning regarding the risks of administering Phenergan by the IV-push method. A jury found for Levine and the Vermont Supreme Court later affirmed. Wyeth appealed sto the U.S. Supreme Court.

HOLDING: Affirmed.

REASONING: Wyeth appealed arguing Levine's failure-to-warn claims were pre-empted by federal law for two reasons: 1) it was impossible for a manufacturer to comply with both state law duties and its federal labeling duties; and, 2) a manufacturer could not have modified a warning label placed on the drug once it was approved by the FDA, because that would interfere with the purposes and objectives of federal drug labeling regulation. The Court rejected Wyeth's first argument, because although a manufacturer generally may not change a drug label after the FDA approves a supplemental application, the FDA's "changes being effected" ("CBE") regulation permits pre-approval labeling changes improving drug safety. Wyeth could have unilaterally added a stronger warning regarding IV-push administration of Phenergan, and there is no evidence the FDA would have rejected such a labeling change. The Court found it is the manufacturer, rather than the FDA, who bears primary responsibility for drug labeling at all times.

The Court also rejected Wyeth's second argument as meritless, because the argument relied on an untenable interpretation of congressional intent and an overbroad view of