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Michael I. Leonard

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the Act provisions. He conceded the technical merit of the majority's analysis but argued that the result was contrary to the purpose of the Act: to protect the uninformed borrower.

Mark A. Myhra

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## Credit Company Did Not Nullify Its Anti-Waiver Provision By Accepting Late Payments But Its Harassing Phone Calls Violated Connecticut's Unfair Trade Practices Act

In *Tillquist v. Ford Motor Credit Co.*, 714 F. Supp. 607 (D. Conn. 1989), the United States District Court for the District of Connecticut held that the creditor's acceptance of late payments in an installment loan contract did not negate the anti-waiver provision of the contract. Further, the court held that the creditor's repossession was not wrongful or illegal under sections 9-503 and 9-504 of the Uniform Commercial Code or the Connecticut Billing Error Act (Conn. Gen. Stat. § 42-84 (1988)). However, the court held that the creditor violated the Connecticut Creditor's Collection Practices Act (Conn. Gen. Stat. §§ 36-243b and c (1988)), entitling the debtor to punitive damages under the Connecticut Unfair Trade Practices Act (Conn. Gen. Stat. § 42-110a - 110q (1988)).

### Background

In June of 1983, Ralph Tillquist ("Tillquist") signed a retail installment loan contract to purchase a car. The Ford Motor Credit Co. ("FMCC") collected the monthly payments. The contract contained an anti-waiver provision which stated that the creditor's acceptance of late payments neither excused the debtor's default nor condoned the late payments.

Tillquist made twenty-two of twenty-five payments late. He was

often two months behind in payments and twice was three months behind in payments. After failing to make payments in August and September of 1985, Tillquist contacted FMCC through his lawyer to dispute its records and to request itemization of his payments. Additionally, he asked that FMCC suspend its collections until they resolved the dispute.

FMCC sent Tillquist the requested itemization, including the late charges incurred. When Tillquist did not make his October payment on time, FMCC repossessed his car. Three days later, FMCC sent Tillquist a repossession notice stating that he could reinstate the contract within fifteen days of receiving the notice. The notice also stated that FMCC would not resell the car for at least fifteen days after repossession and allowed Tillquist to redeem the vehicle anytime before FMCC sold the car.

FMCC had frequently called both Tillquist and his wife at work to discuss his delinquent payments both before and after the repossession. The calls persisted even after the Tillquists informed FMCC that the calls were causing problems with their employers. FMCC also called Tillquist's home and spoke to his children about the debt. During one call, a FMCC representative told Tillquist's fourteen year old stepson that he was "stupid" and informed him that FMCC was going to repossess the car.

Tillquist filed a two-count complaint against FMCC in the United States District Court for the District of Connecticut. Tillquist alleged that FMCC's repossession was illegal under section 9-503 of the Uniform Commercial Code ("U.C.C.") and the Connecticut Billing Error Act, Conn. Gen. Stat. §§ 42-84a and b (1988), because he did not owe the amount claimed. Additionally, he claimed that FMCC violated the Retail Installment Sale Financing Act, Conn. Gen. Stat. §§ 42-83 - 100a (1988), by giving conflicting redemption dates. Tillquist also alleged that FMCC committed unfair and ha-

rasing collection practices in violation of the Connecticut Creditor's Collection Practices Act. (Conn. Gen. Stat. §§ 36-243a - 243c (1988)).

### FMCC's Repossession was Neither Wrongful nor Illegal

Tillquist claimed that after FMCC accepted his late payments it could not repossess his car without informing him that it expected prompt payment. FMCC argued that the contract's anti-waiver provision notified Tillquist that by accepting his late payments FMCC did not waive its right to insist on prompt payments thereafter. The court noted that generally a creditor who has accepted late payments must notify the debtor that it will thereafter insist upon strict compliance with the terms of the contract to avoid repossession. However, other states' courts are split in their conclusions when contracts contain anti-waiver provisions.

Connecticut courts had not previously addressed whether a creditor nullifies an anti-waiver provision in a security agreement by accepting late payments. However, the Connecticut Supreme Court had addressed the effect of an anti-waiver clause in a lease agreement. *S.H.V.C., Inc. v. Roy*, 188 Conn. 503, 450 A.2d 351 (1982). In *Roy*, the court held that a lessor does not void the anti-waiver clause of the lease agreement by accepting late rental payments. In the present case, the district court recognized that although security agreements and leases are distinguishable, the anti-waiver provisions were practically identical. Accordingly, the court followed *Roy* and held that in light of the anti-waiver clause, FMCC did not waive its right to prompt payment by accepting some late payments. Therefore, FMCC was under no duty to give Tillquist notice before repossessing his car.

The court rejected Tillquist's claim that FMCC violated section 9-503 of the U.C.C. by repossessing his car while the parties disputed whether he had defaulted. Tillquist relied on *Ford Motor Credit Corp. v. Byrd*, 351 So. 2d

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## Anti-Waiver Provision (from page 21)

557 (Ala. 1977). In *Byrd*, the creditor asked the debtor to come to its office to discuss the disputed default. While the debtor was reviewing the creditor's records, the creditor repossessed his car. The *Byrd* court held that the repossession violated U.C.C. section 9-503 because the creditor engaged in trickery. The court in the present case held that *Byrd* was not applicable because FMCC did not use trickery to repossess Tillquist's car, and because Tillquist knew he was behind in payments.

Tillquist also claimed that FMCC's repossession notice violated section 9-504(3) of the U.C.C. because it demanded more money than Tillquist owed. Tillquist was three payments behind when FMCC repossessed the car. Tillquist subsequently made two payments, on October 18 and 19, but the October 21 repossession notice did not reflect these payments. The court rejected Tillquist's claim that section 9-504(3) of the U.C.C. prohibited mistaken repossession notices. Even if it did, the court held that the October 21 notice did not constitute a mistake because FMCC did not have sufficient opportunity to change its records.

Tillquist further alleged that the repossession notice was misleading because it informed him that he could reclaim his car within fifteen days of receipt of the notice (October 21), or within fifteen days from the date of repossession (October 18). Tillquist argued that the conflicting dates impaired his rights under the Retail Installment Sale Financing Act ("RISFA"), Conn. Gen. Stat. §§ 42-83 - 100a (1988), because if he chose to rely on the later of the two dates he may not have been able to reclaim his car. The court concluded, however, that October 21 was not a redemption date but the last day Tillquist could reinstate the contract. Thus, the court held that the notice did not violate the RISFA because it did not contain conflicting redemption dates.

## FMCC's Communications with Tillquist Constituted Harassment

The court then addressed Tillquist's final claim that FMCC violated the Connecticut Creditor's Collection Practices Act ("CCPA"), Conn. Gen. Stat. §§ 36-243a-243c (1988). The CCPA limits who a creditor may contact in connection with collecting a debt. The list does not include members of the debtor's family. Accordingly, the court concluded that FMCC had violated the CCPA by calling Tillquist's home and talking to his children about the debt. The CCPA also forbids direct communications with a debtor whom the creditor knows is represented by an attorney, unless the attorney fails to respond to the creditor's inquiries. The court found that FMCC violated the CCPA by contacting Tillquist after he informed FMCC that he was represented by an attorney. The court also held that FMCC violated the CCPA by calling the Tillquists while they were at work. Overall, the court found that FMCC had engaged in a pattern of general harassment in violation of the CCPA.

Finally, the court addressed whether the CCPA violations were also violations of the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. §§ 42-110a - 110q (1988). A trade practice violates the CUTPA if the practice constitutes a breach of public policy. The court held that FMCC's violations of the CCPA amounted to a breach of public policy under the CUTPA.

The court found that Tillquist had not shown any actual damages, but recognized its discretionary power to award punitive damages where the defendant's actions demonstrate a willful disregard for others. The court held that FMCC intentionally violated the CCPA by its embarrassing and harassing phone calls and awarded Tillquist \$500 in punitive damages plus reasonable attorney's fees.

Michael I. Leonard

## New Jersey's Anti-Eviction Act Protects Tenants From Eviction Induced By Unreasonable Lease Changes

In *447 Associates v. Miranda*, 115 N.J. 522, 559 A.2d 1362 (1989), the New Jersey Supreme Court examined New Jersey's Anti-Eviction Act, N.J. Rev. Stat. §§ 2A:18-61.1 - 61.12 (1988) ("the Anti-Eviction Act"), and held that in an action to evict a tenant for nonpayment or late payment of rent, the tenant may raise the defense that late rent payments stemmed from an unreasonable change in the tenant's renewal lease. The court also held that landlords must take into account the totality of the tenant's circumstances and not impose lease changes that will cause undue hardship to tenants.

### Background

In October of 1984, Carmen Miranda ("Miranda") entered into a lease agreement for an apartment in Newark, New Jersey. Under that lease, Miranda paid her monthly rent, in cash, directly to her landlord or his agent after she had received and cashed her public assistance check. Although the public assistance check typically arrived on the third of the month or later, Miranda was never charged a penalty for late payment of her rent.

In May of 1986, the apartment building in which Miranda lived was sold to 447 Associates ("Associates"). On May 18, 1986, Associates mailed Miranda a "Notice of Rent Increase" which terminated her lease on August 31, 1986, and offered her a new lease. Under the new lease, Miranda's rent was increased and she was required to pay her rent by mail no later than the fifth of the month. If the rent check was received after the fifth of the month, Miranda would be