

Ask the Lawyer: Timing Matters in Fighting Auto Repossessions

By Mathew B. Tully

Q:

Can a creditor repossess my car while I'm on active duty?

A:

When it comes to the repossession of a motor vehicle that a service member purchased under a financing contract, timing is important.

Generally, a creditor needs a court order to repossess a motor vehicle purchased by a service member through an installment contract while he is on active duty. For this protection to apply, the service member must have entered into the contract before going on active duty. This protection is a core component of the law known as the Servicemembers' Civil Relief Act.

However, it is not uncommon for creditors and other parties to try to get around the SCRA by requesting that service members sign a written waiver of their SCRA rights. If a waiver is executed correctly — and while the service member is on active duty or after such service is completed — then a creditor may repossess a motor vehicle without a court order. A waiver signed by a service member before entering active duty would be invalid.

Last October, the U.S. District Court for the Eastern District of Virginia issued a decision that illustrates the importance of timing in SCRA repossession cases. In *Whigham v. Chase Auto Finance Corp.*, Joseph C. Whigham purchased a Chevrolet Silverado in April 2007 while he was on active duty in the Navy.

About five months later, Whigham's truck was repossessed while he was on active duty and sold at auction.

In May 2011, Whigham sued Chase Auto Finance Corp., alleging Chase had violated his SCRA rights when it repossessed and sold his car. The court dismissed the suit, ruling that the SCRA's protections against repossession did not apply to Whigham because he entered into the contract while he was on active duty.

"Any other reading of the statute would deter businesses from entering into installment contracts with members of the armed services on active duty," the court said.

Service members should notify creditors when they are called to active duty. This notification will put creditors on notice that they can't terminate an installment contract without a court order.

If a creditor pursues such a court order, the SCRA affords active-duty members a chance to

request a stay in civil proceedings if their military service prevents them from appearing in court.

Service members who have had a car repossessed while they were on active duty should consult with a military law attorney to determine whether their SCRA rights have been violated. They may be able to sue the creditor for actual, consequential and punitive damages, as well as attorney's fees.