

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAURICE GOODMAN and	§	
RAMONA C. RICHARDS,	§	No. 416, 2003
	§	
Plaintiffs Below,	§	
Appellants,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
BMW FINANCIAL SERVICES NA, §	§	in and for New Castle County
LLC, a Delaware corporation,	§	C.A. No. 03C-03-127
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: May 11, 2004

Decided: August 2, 2004

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 2<sup>nd</sup> day of August, 2004, upon consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Maurice Goodman and Ramona C. Richards appeal from a Superior Court decision dismissing their complaint against BMW Financial Services NA, Inc. (BMW Financial).

2) Appellants purchased a BMW car in May 2002. BMW Financial financed the purchase, and appellants signed an installment sale contract that provided, among

other things, that they would be in default if the vehicle were “seized... by governmental or legal process.”

3) On February 5, 2003, the Delaware State Police seized appellants’ BMW pursuant to an assets seizure warrant issued by the Superior Court. The following day, the State transferred possession of the vehicle to BMW Financial. By notice dated February 10, 2003, BMW Financial advised appellants that it had repossessed their car for failure to make required payments and that the car would be sold unless appellants paid the entire unpaid balance before the sale. A second notice, dated April 24, 2003, corrected the reason for the repossession, which was a default resulting from the civil seizure.

4) Appellants tendered their February and March payments to BMW Financial, and demanded the return of their car, but the payments and the demand were refused.

5) On March 14, 2003, appellants filed a complaint against BMW Financial seeking the return of their car and damages. On May 7, 2003, appellants filed a Petition for Return of Property against the State, alleging that the car “was unlawfully seized pursuant to a warrant which contained false and misleading information.”

6) In July 2003, BMW Financial filed a motion to dismiss appellants’ amended complaint for failure to state a claim upon which relief can be granted. BMW Financial alleged that appellants defaulted under the terms of their installment sale

contract when the State seized their car. Because of that default, BMW Financial alleged that appellants “are not entitled to an Order of Replevin, unless they pay the full amount of the accelerated debt owed under the Contract.” The Superior Court agreed and dismissed the amended complaint with prejudice.

7) There are two problems with the trial court’s ruling. First, it appears that the State lacked authority to give the car to BMW Financial. Pursuant to 16*Del. C.* §4784 (e), seized property is “deemed to be in the custody of the Secretary [of Health and Social Services] subject only to the orders and decrees of the Superior Court.” The Secretary may place the property under seal, remove it to a safe place, or instruct the Department of Health and Social Services to take custody of it.

8) Second, even if BMW Financial had lawfully obtained possession of the car, it does not necessarily follow that the State’s seizure of the vehicle gave BMW Financial the right to declare a default under the installment sale contract. Arguably, the contract language stating that the buyer defaults if the vehicle is seized must be construed to mean that the buyer defaults if the vehicle is *validly* or *lawfully* seized.

9) “On a motion to dismiss for failure to state a claim, it must appear with a reasonable certainty that a plaintiff would not be entitled to the relief sought under any set of facts which could be proven to support the action.”<sup>1</sup> In this case, appellants

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<sup>1</sup>*Rabkin v. Hunt*, 498 A.2d 1099, 1104 (Del. 1985).

contend that the car was seized unlawfully, and they filed a Petition for Return of Property, which will resolve that claim. If they are correct and the seizure was unlawful, and the courts accept their interpretation of the term “seized” in the installment sale contract, then appellants would be entitled to damages from BMW Financial for its breach of the installment sale contract. Thus, the trial court should have denied the motion to dismiss.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, REVERSED. This matter is remanded for further action in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger  
Justice