by Lawrence Savell

The REO Speedwagon Farewell Tour

Litigating Because "I Don't Want To Lose You"

Given the association between cars and rock-and-roll, it is not surprising that some bands have demonstrated their sophistication and taste by naming themselves after motor vehicles. Few have reached the loftiest plateau by invoking the name of a departed classic mark. But REO Speedwagon did.

An REO Speedwagon truck was the golden oldie involved in Gould v. Symons, decided on September 4, 2002, by the United States District Court for the Eastern District of Michigan.

According to the Court (with a bit of lyrical license added), Michael Gould owned a 1948 REO Speedwagon, which was disassembled and "in a state of gradual restoration" inside Gould's fenced residential yard. The property was in a Saginaw district zoned for agriculture and single-family homes.

Defendant John Symons, a code enforcement officer, noticed the dismantled truck. Symons approached the fence and told Gould, who was in his yard, that storing the truck there violated a City ordinance.

After some discussion, Symons placed a violation notice in the fence and mailed a copy. The notice provided: "All described property must be removed within ten (10) days from the date of this Notice, or a hearing requested in writing, within that time at Environmental Improvement Office to show cause why it should not be removed. If the property is not removed, nor a hearing requested within the allotted time, it shall be deemed abandoned property and removed and disposed of by order of the City of Saginaw, and the costs of such removal and disposal assessed to these premises."

Gould did not respond to the notice. About six weeks later, Symons and others went to the home to remove the truck parts. Gould refused to allow them onto his property, and asked if they had a warrant. He was told that no warrant was needed.

After Gould spoke with supervisory police personnel, one of them allegedly directed others to enter the property, put his hand on his gun, and told Gould that if he was still standing there when they opened the gate, he was going to jail. Gould moved out of the way, and Symons took the gate off its hinges. Defendants removed the truck parts, "took them on the run" on a flatbed, put the gate back and left

Gould refused to "roll with the changes" and, acting pro se (representing himself without counsel), sued the personnel, alleging among other things that his rights under the U.S. Constitution were violated. Among the provisions he cited was the Fourth Amendment, which states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The defendants filed a motion for summary judgment, seeking to have the case dismissed without trial. A Magistrate Judge recommended that the officials' motion be granted as to all claims except the Fourth Amendment claim. The defendants objected to the denial of summary judgment on the Fourth Amendment claim.

The District Judge adopted the Magistrate Judge's recommendation, and actually went ahead and affirmatively ruled in favor of Gould on his Fourth Amendment claim.

The Court ruled that the seizure of Gould's truck without a warrant was unreasonable. "[T]he seizure of personalty [personal property] by means of entry onto private property requires a warrant, that is, authorization by a neutral and detached officer, in order to protect 'against arbitrary invasions by government officials.'

"The defendants in this case claim that their role in abating nuisances, thereby engaging in a community caretaking function, constitutes . . . an exception [to the warrant requirement. But in this case, [t]here was no demonstrated need for immediate action. The record contains no evidence that the vehicle posed an immediate threat to health or safety, or that it was causing a disturbance . . . . The vehicle was located behind a five-foot high fence immediately adjacent to the defendant's residence. It is well-established that the protection provided by the Fourth Amendment extends to the "curtilage" [land and buildings immediately surrounding and used with a dwelling] area of a house. Although the plaintiff's fence did not prevent passers-by from observing what was in his yard, it did prevent them from gaining easy access without climbing the fence or having to use the closed gate. The actions of the city officials in this case of removing the gate and entering the plaintiff's residential premises to seize his property required authorization by a 'neutral and detached magistrate.'"

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Mr. Gould continues to "ride the storm out." In a conversation in February, he advised that he had not yet received any compensation from the city, nor the return of those parts of his vehicle that had been taken (some had apparently been lost by the city in the interim). The parties have not been able to reach a settlement, and thus "keep the fire burning."

Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior "Old Cars In Law" articles can be found on-line at www.lawrencesavell.com.