

## The Traumatic Trade In

### Dealer Tried For Conversion

Historical records do not indicate what was the precise inspiration for William Shakespeare to pen the line, "parting is such sweet sorrow." However, my bet is that it was occasioned by the bard's selling or trading-in his collector carriage for another model.

To a car collector, parting with one's beloved old vehicle can be a very traumatic event. But it can be even more upsetting if the deal proves to be less than you thought it was. An ounce of vigilance can help avoid a gallon of tears.

Before agreeing to hand over your vehicle, make sure you understand what you are getting in return. If you are selling your car, make sure that the amount and timing of payment are spelled out clearly. If you are trading in your old car for another, make sure that the representations about the other car's condition, ownership, and other significant qualities are clearly memorialized in a written agreement. If your expectation is that you will be able to get your car back if the deal does not go forward as planned, make sure that such expectation is set forth in writing as well.

Such precautions could have been of assistance to the plaintiff in *Wyman vs. Terry Schulte Chevrolet, Inc.*, decided on August 19, 1998 by the Supreme Court of South Dakota.

According to the Court, on Friday, July 6, 1990, Leroy Wyman brought his 1968 Chevrolet Caprice to a used car lot owned and operated by Terry Schulte. Wyman was interested in purchasing a used Chevrolet Corsica that Schulte had displayed. Wyman filled out a purchase order and applied for financing. He took the Corsica home with him over the weekend, leaving the Caprice (the parties disagreed whether Wyman surrendered title to the Caprice that day).

Upon returning to the lot on Monday, July 9, 1990, Wyman was told that his initial application for financing for the Corsica had not been approved. Wyman testified that he asked for the return of the Caprice and was told that it had been sold over the weekend. (In fact, the Caprice was not sold by Schulte until July 20, 1990.)

Believing he had no other option, Wyman made a second application for financing. Sometime later that week Wyman received financing and purchased the Corsica.

Less than a year later, Wyman was unable to make the payments. Under the threat of repossession, he voluntarily surrendered the Corsica. Wyman then sued Schulte, alleging deceit, conversion, deceptive trade practices, and emotional distress, and requesting actual and punitive damages.

The trial court excluded the testimony of all of Wyman's witnesses, with the exception of Wyman himself, and instructed the jury to disregard the testimony. It directed a verdict in favor of Schulte on the deceit, deceptive trade practices, and punitive damages claims. It also directed a verdict in favor of Wyman on the issue of conversion. The court allowed only Wyman's claim of intentional infliction of emotional distress to go to the jury, which found in favor of Schulte.


Both sides appealed the trial court's rulings (the jury verdict was not appealed). The appellate court reversed the trial court, and remanded (sent back) the case for retrial.

Regarding Wyman's appeal arguments, the Supreme Court ruled that the testimony of certain former Schulte employees and customers offered by Wyman was relevant to Wyman's deceptive trade practices claim, and that the probative value of the evidence was not outweighed by its prejudicial effect. It concluded the trial court had erred by disallowing such evidence and by directing a verdict for Schulte. It remanded the case for retrial on that claim.

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Turning to Schulte's appellate arguments, the Court also agreed that the lower court had erred in granting Wyman a directed verdict on the issue of conversion. It noted that "[c]onversion is the act of exercising control or dominion over personal property in a manner that repudiates the owner's right in the property or in a manner that is inconsistent with such right... Terry Schulte contends that Wyman purchased the Corsica on July 6, 1990. Wyman, however, testified that he still had the title to the Caprice in his possession when he drove the Corsica off the lot on that date. Wyman testified that he did ultimately purchase the Corsica and sign over the title of the Caprice to Terry Schulte sometime the following week. The date on the Assignment of Title, however, reads July 6, 1990...[R]easonable minds could differ as to whether Terry Schulte had valid title to the Caprice on July 6, 1990, and therefore, did not exercise control or dominion over the vehicle in a manner that repudiated Wyman's right in the property or in a manner that was inconsistent with such right. Accordingly, we find that a directed verdict was not appropriate...The decision is reversed and the matter remanded for retrial." 

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