

Actions To Recover Possession of Personal Property

Basic Magistrates School

Conversion: "Forced Sale"

- Plaintiff is the owner or bailee of property.
- Property was wrongfully taken or wrongfully retained from him.
- Defendant is person who wrongfully took or retained property.
- Remedy is fair market value of property at time wrongfully taken or retained, plus interest at 8% from that date until paid.

Recover Possession of Non-Secured Property

- Plaintiff is the owner or bailee of property.
- Property was wrongfully taken or wrongfully retained.
- Defendant is in possession of the property.
- Remedy is return of the property and damages for physical damage to property and loss of use.

Recover Possession Secured Party

- Plaintiff is seller of goods or lender of money.
- Valid security agreement.
- Security interest in property seeking.
- Buyer defaulted in payment.
- Remedy is possession of the property.
 - All property listed as security if purchased at one time
 - Otherwise apply RISA, if applicable

Security Agreement

- In writing.
- Contains a description of property to be security.
- Indicates an intention to create a security agreement.
- Authenticated by the debtor.
- If consumer credit contract, dated.

Duties of Creditor

- Commercially reasonable sale
- Must send debtor authenticated notification of disposition within reasonable time [G.S. 25-9-611]
- After sale, must send debtor explanation of how arrived at surplus or deficiency [G.S. 25-9-616]

Debtor's Remedies for Creditor's Failure to Comply [G.S. 25-9-625]

- Actual damages for noncompliance or credit service charge, plus 10% of principal amount of debt.
- Additional damages of \$500 for
 - Failure to send an explanation of surplus or deficiency to debtor if failure is part of pattern, or consistent with practice, of noncompliance
 - Failure to comply with debtor's authenticated request for an accounting or list of collateral
