IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 1, 2010 Session

WILHELMENA SCOTT v. JAMES E. HOUSTON, INDIVIDUALLY AND DBA SHALLOWFORD AUTO SALES, INC. ET AL.

Appeal from the Chancery Court for Bradley County
No. 07-141 Jerri S. Bryant, Chancellor

No. E2009-01118-COA-R3-CV - FILED FEBRUARY 26, 2010

Wilhelmena Scott ("the plaintiff") purchased a 1997 Lexus automobile from her employer, James E. Houston ("the defendant") in May 2003. The purchase was routed through a sales contract with Shallowford Auto Sales.[1] The contract recites a purchase price of $18,353 payable in 22 installments of $800 and a final payment of $753. The contract sets the interest rate at "0" but imposes a "late charge" of $100 for any payment more than five days late. The defendant repossessed the Lexus after the plaintiff had paid $18,600 and had asked for her title. Also, the repossession came after the plaintiff had cooperated with the FBI in securing the conviction of the defendant for operating an illegal gambling business and money laundering. The plaintiff sued the defendant alleging in her complaint that the repossession was wrongful and undertaken by the defendant in retaliation for the plaintiff's cooperation in his prosecution. The complaint included a demand for punitive damages. The defendant filed a counterclaim seeking what he claimed was a balance due based on late fees and the cost of repossessing the automobile. Following a bench trial, the court found (1) that the defendant waived the late fees by continually accepting late payments without protest, (2) that the repossession was wrongful and in retaliation, and (3) that the plaintiff sustained damages of $16,635.02. On post-trial motions, the court sustained its earlier order and held, additionally, that although the defendant's actions warranted punitive damages, the law did not allow them in this type of case. The defendant appealed, challenging both liability and damages. The plaintiff raises issues concerning the amount of damages and the trial court's

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[1]The contract names "Shallowford Auto Sales" as the seller. Although the complaint named a corporation and Houston doing business as the corporation, at trial the parties treated the true defendant as Mr. Houston who was doing business as "Shallowford Auto Sales," a sole proprietorship. We will do the same. Also, the trial proceedings included as defendants the people who actually conducted the repossession for Mr. Houston, Brad Owens dba Tri-State Recovery and Steve Phillips. They were defaulted for failing to file an answer and are not parties to this appeal.

refusal to consider punitive damages. We affirm in part and reverse in part and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part; Reversed in Part; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the Court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Paul Hensley, Knoxville, Tennessee, for the appellants, James E. Houston, individually and dba Shallowford Auto Sales, Inc.

William J. Brown, Cleveland, Tennessee, for the appellee, Wilhelmena Scott.

OPINION

I.

According to the undisputed proof at trial, Shallowford Auto Sales was never a legitimate car lot. It was one of many sites maintained by the defendant as a cover for taking money wagers in his multi-state gambling and money laundering operation. There was a secret door where the wagers were taken. The business never sold cars to the general public; it only sold cars to the defendant's employees who were willing to participate in some aspect of the illegal enterprise. Since the goal was not to make money, the terms of the car sales were generally favorable to the employees.

The sale of the Lexus to the plaintiff was no exception. The plaintiff worked for the defendant at a "lottery house" where she "ran the lottery" for that particular site. Her work included taking money from customers, writing tickets to document wagers, and dropping off the money to the defendant at a predetermined location. The defendant keyed his payoffs to the televised results of the Illinois Lottery. As a part of the operation, the plaintiff allowed three separate parcels of the defendant's real property to be titled in her name. The defendant decided to purchase a new Lexus and offered the plaintiff his old one. When she decided to buy it, the defendant financed it with a no-interest contract in the name of the car lot. The purchase price of $18,353 was to be paid in monthly installments of $800. When the plaintiff noticed a provision in the paperwork that imposed a late fee on any payment "late more than 5 days," she asked the defendant about the late fee. He assured her that, as long as she worked for him, she did not need to worry about it. The contract does not identify a particular day of the month for payments other than the first payment which was due "6-2-

03." The plaintiff signed the contract in May 2003. Instead of making one payment of $800, she made two monthly payments of $400.

In May 2005, the FBI raided virtually all of the defendant's locations. They originally planned the raid for March but postponed it until May after the plaintiff agreed to cooperate. A prosecuting agent appeared at trial and confirmed the plaintiff's involvement in the success of the raids. At that point, the lottery house was closed, and, with less income, the plaintiff became unable to make the $800 per month payments. She talked to Vicky Reedy, after being directed to her by the defendant. Reedy assured the plaintiff that she could finish paying the balance with payments of $400 per month. Trial exhibit 4 is a ledger sheet secured from an employee of Shallowford Auto Sales reflecting a balance as of "09/24/2004" of $7,553 with no late fees imposed despite some late payments. Trial exhibit 3 is the plaintiff's itemization of payments, including cancelled checks, totaling $18,600. The exhibit reflects a history of fairly consistent payments with a final payment on principal of $400 on May 30, 2006, and a payment of $200 made July 1, 2006, for "late charge."

Eventually the defendant learned of the plaintiff's cooperation with the FBI. On or about November 8, 2005, the defendant signed a letter to the plaintiff that she received through the mail. The letter states, in pertinent part, as follows:

> This letter is to serve as notification of the past due loan payment for the above referenced account. . . .
>
> * * *
>
> As of today, the past due amount is $7428.30. Your scheduled payments are due at the 1st of the month in the amount of $800.00.
>
> This balance includes the charge of $100.00 (Late Fee) for each month past due plus a 10% penalty fee on the late fees.
>
> Upon receipt of this letter you have 5 days to pay the past due balance in full or the vehicle will be repossessed for non-payment.

The letter did not contain an itemization or explanation of the balance due. Later, at trial, the defendant stipulated that the contract did not provide for a penalty on top of late fees.

The plaintiff did not immediately respond to the letter. The car was wrecked just a few days later. Someone came to the plaintiff's home in November asking about the car, but she truthfully told them it was not there. The car was in the shop being repaired. The plaintiff continued to make payments and paid to have the car repaired. Along with her final payment of $200, the plaintiff mailed a note to the defendant stating that she had paid the principal plus $200 in late fees. She asked if someone would please call her. On July 20, 2006, she sent a letter asking for her title and stating that she had "receipts" for payments. In December of 2006, she again wrote stating that she had tried without success to call. She again asked that someone call her. The plaintiff received no return calls or correspondence.

In May 2007, the defendant repossessed the Lexus from the plaintiff's driveway. Plaintiff called the police but later learned that the car had been repossessed when she received a telephone call notifying her that she could pick up her personal items that were left in the car. At that point, she hired counsel. In response to the inquiries of her counsel, the defendant claimed an outstanding balance of $10,110 consisting of late fees of $4,900, repossession fees of $1,450, interest of $2,960 and payments due on "Cindy Scott's car" of $800. Ms. Scott is the plaintiff's daughter. At trial the defendant stipulated that he was not entitled to collect payments on Ms. Scott's car or interest from the plaintiff on the Lexus.

Plaintiff testified that her driveway was damaged during the repossession. She submitted an estimate from a contractor in the amount of $750 based on the defendant's stipulation that she did not have to call the contractor as a witness. She also submitted photographs of the scratches as exhibits. The plaintiff claimed $12,225 as the value of the car according to the NADA book, the estimate being the "value for clean retail" as of the date of repossession. She also claimed prejudgment interest on the value of the automobile calculated to be $2,050. The plaintiff testified that, using May 11, 2007, as the date of repossession, her damages from loss of use of the car through the date of trial were $24,480 based on 612 days at $40 per day. She also testified to lost personal items valued at $300, but listed on her summary of damages at $280. Further, the plaintiff testified that when she inspected the Lexus during the litigation it was obvious that it had been used following the repossession. The mileage was approximately 5,000 miles higher than when she last had the vehicle serviced, there was some minor damage to the vehicle, and someone else's personal items were in the console of the vehicle. The plaintiff testified that there was no way she could have put 5,000 miles on the vehicle after she last had it serviced, because she only drove it on Sundays and when she went out of town. A witness for the plaintiff testified that he saw the vehicle being driven by someone on two occasions after it had been repossessed. He admitted on cross-examination that there are a lot of white Lexus automobiles of the same model, but testified that this car had distinctive features based on a past repair that he was able to inspect closely.

The plaintiff's cross-examination was primarily a discussion of her late payments. In August 2003, she only made one payment of $400, but in September she made three payments to catch up. In February 2004, she only made one payment of $400. In May 2004, she made no payments and in June 2004 she made two payments of $400. In July 2004 she made only one payment of $400. In October 2004, she made no payments. In November 2004 through May 2005, she made payments of only $400 per month. She did not make a payment in June 2005 because of all the confusion with the FBI raid. She made one payment in July 2005 and no payment in August 2005. The plaintiff admitted having conversations with Vicky Reedy who told her to get her payments made and saying that she would be charged late fees for untimely payments. According to the plaintiff, the amount Vicky Reedy said the plaintiff owed did not match what the plaintiff really owed.

The defendant did not testify at trial. Instead, he called his employee, Vicky Reedy, to testify that the plaintiff was inconsistent in her payments and that the defendant had nothing to do with the repossession. Reedy claimed on direct that she handled the repossession without any involvement from the defendant. Her credibility was quickly destroyed on cross-examination when she had to admit that it was the defendant who signed the November 2005 letter. In fact, even though she claimed to be handling the file, she admitted that she did not even know about the November 8, 2005, letter. Also, contrary to her testimony at trial, Reedy admitted that in her deposition she said that the defendant, not her, handled the file. Even though she claimed to be the keeper of the file, it was apparent during her cross-examination that she did not know the contents of the file. Reedy denied telling the plaintiff that she could pay at the rate of $400 per month, and said that she often called and wrote the plaintiff insisting on payment. At trial, she testified to the existence of numerous documents that allegedly supported her testimony, which documents she did not bring to trial and did not produce in discovery. Although Reedy claimed to be the person in charge of keeping the books of Shallowford Auto Sales, she denied any knowledge of its admitted illegal activities. Further, even though Reedy denied any knowledge of illegal activity, she admitted being an officer in numerous of the defendant's business entities at the time of trial.

II.

As previously indicated, the trial court found in favor of plaintiff in an order that states as follows.

> The court finds that the parties had modified the terms of the written contract by their conduct waiving any claim for late fees. Further, that by pursuing late fees and interest, the repossession amount was inappropriate and in retaliation for the plaintiffs

> cooperation with the federal authorities. To allow the defendants to repossess an automobile that was within six months of being paid for would be unfair and unjust with reference to her forfeiting the whole car after missing two payments for which she did pay late fees and for which the plaintiff made up the payments. The Court therefore finds by clear and convincing evidence that the vehicle was improperly and illegally repossessed and that said repossession was with an improper motive.
>
> The Court finds that the value of the vehicle on the date of its seizure by the defendants was $12,225, and that the plaintiff is entitled to interest for that sum in the amount of $2,052.02. In addition, the Court was of the opinion that the appropriate value for the loss of use of that vehicle would have been one day a week for two years which would have been 52 times, which the court values at $2,080. The court doesn't find that the cost of repair to the drive way is reasonable and therefore awards nothing for that claim, but does award $280 for the loss of her personal property. As such, the total judgment awarded is $16,635.02 against the defendants James E. Houston and Brad Owens, dba Tri-State Recovery. In addition, the court will allow a motion for the plaintiffs attorneys fees post trial.

The plaintiff thereafter filed her motion claiming attorney fees of $30,886.14. Both parties filed motions to alter or amend. The plaintiff asked the court to amend its judgment to include a specific finding that the repossession amounted to civil conversion which justified an award of attorney fees as exemplary damages. The defendant's motion, in essence, asked the trial court to reverse itself and enter a judgment in favor of the defendant.

The trial court's order on the various motions states:

> This cause came on to be heard on Plaintiff's Motion to Alter or Amend requesting finding by this court that punitive damages would be appropriate in this case. The court took the matter under advisement and reviewed the same again, as well as additional authority provided by counsel. It is clear in this case that the repossession was retaliatory because Plaintiff began cooperation with the federal authorities. Defendant in this case had continually accepted Plaintiff's payments at various times

> and they had by their course of conduct altered the provisions of the contract as long as Plaintiff was his employee and helping him in his illegal operations. Further, Plaintiff admitted being behind on more than one payment.
>
> The court hereby holds that although the facts in this case would warrant punitive damages, the law in this matter does not provide for punitive damages. Plaintiff's motion is overruled.
>
> Defendant requested the court revisit the issue of the mileage on the vehicle. This Motion is overruled.

III.

The defendant filed the notice that initiated this appeal and raises two issues which we will repeat verbatim:

> Whether the court erred in not permitting the defendant . . . to recover under the late fee provision of the contract entered into by the parties and in ruling that the repossession of the vehicle was improper.
>
> Whether the court erred in failing to take into account the excessive mileage of the vehicle and condition of the vehicle in determining the value of the vehicle in question in awarding damages to [the plaintiff].

The plaintiff raises two issues of her own which we quote verbatim from her brief:

> Whether the trial court was correct in its legal conclusion that it was without authority to grant punitive damages in this case.
>
> Whether the trial court was correct in its legal conclusion that it should limit plaintiff ['s] . . . damages for loss of use to those times that [the plaintiff] typically used the vehicle.

IV.

The Supreme Court has recently reaffirmed the standard of review of a trial court's findings of fact and law as follows:

> Where, as here, the trial court sits without a jury, we review findings of facts de novo upon the record accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); ***In re Adoption of A.M.H.,*** 215 S.W.3d 793, 809 (Tenn. 2007). Questions of law . . . are reviewed de novo with no presumption of correctness. ***Adoption of A.M.H.,*** 215 S.W.3d at 809; ***Kirkpatrick v. O'Neal,*** 197 S.W.3d 674, 678 (Tenn. 2006).

In re Angela E., ____ S.W.3d ____,No. W2008-00120-SC-R11-PT, 2010 WL 532822 at *5 (Tenn. filed Feb. 10, 2010).

V.

The defendant argues that the evidence preponderates against the trial court's finding that he waived the late fee provided for in the contract. The defendant argues that the plaintiff's letter of July 1, 2006, which transmitted a check for $200 for late charges plus her admission that Vicky Reedy was hard to deal with and demanded late charges, defeat the trial court's finding. Also, he argues that the plaintiff's testimony that Vicky Reedy agreed to accept $400 per month is overcome by Vicky Reedy's testimony to the contrary. We believe the trial court's findings contain an implicit determination that Vicky Reedy's testimony was not credible. Any contention that her testimony is a basis for overturning any factual finding of the trial court is without merit. Also, the plaintiff's letter and her payment of $200 came after she had paid the full principal balance recited in the contract. Even though the plaintiff acknowledged that Vicky Reedy was hard to deal with and insisted on payment of late charges, she also testified that Vicky Reedy always recited an incorrect amount due in their discussions, as in the November 2005 demand letter. That letter took the untenable position that the only way the plaintiff could save her car from repossession was to catch up her daughter's car payments, pay a penalty on top of late fees, and pay interest not provided for in the contract. The proof is consistent with the trial court's finding that it was not the late fee the defendant was really after, but revenge. Other testimony that supports the trial court's finding is the plaintiff's unrefuted testimony that the defendant told her as long as she worked for him, she did not need to worry about late fees.

Trial exhibit 4, which under the unrefuted testimony is the defendant's ledger of payments received through September 2004, confirms that the defendant was not adding late charges to the plaintiff's balance even though she was late on some payments. It is clear that any attempted revocation of the waiver came only after the defendant learned that the

plaintiff had a hand in bringing down his illegal enterprise. It would be a strange and illogical result for us to find, as the defendant seems to suggest, that a creditor can waive late fees on the front end of a finance agreement, and then revoke that waiver in order to punish the debtor for testifying against him.

Even if we were to accept the defendant's skewed version of the facts and treat the November 2005 letter as an attempted revocation of the waiver, we still have the problem of the defendant continuing to accept the payments, in silence according to the plaintiff, until the plaintiff had (1) paid to have the car repaired after a wreck, and (2) paid the full principal balance due under the contract. A respected commentator on the subject of secured transactions and debtor-creditor rights has written, "[i]f the secured party accepts another late payment [after sending a strict compliance letter], regardless of the reasons, the effect of the strict compliance letter is undone." Robert M. Lloyd, *Wrongful Repossession in Tennessee*, 65 TENN. L. REV. 761, 766 (1998). The defendant cites ***Davenport v. Bates***, No. M2005-02052-COA-R3-CV, 2006 WL 3627875 (Tenn. Ct. App. M.S., filed December 12, 2006) for the proposition that, "[i]n order for the Court to find a waiver of the late charges, an accepted course of conduct or dealing must have been established by the parties and also the debtor must have relied on that course of conduct in his further dealings." Pursuant to the preponderance of the evidence, the plaintiff had been assured that she did not need to worry about late fees, she had been told she could pay at the rate of $400 per month, and her payments from 2005 forward were neither acknowledged nor rejected. Any information she received from the defendant about the balance due bore no relation to the truth. The plaintiff, relying on the belief that the situation would not change, continued making payments until she paid the full principal balance. We hold that this evidence supports a finding of waiver even under the defendant's definition. Incidentally, we will not fault the plaintiff, or negate the waiver, for the plaintiff's voluntary submission of $200 in late fees when she was trying to persuade the defendant to release her title after she had paid for the car.

It is true that the contract contained an "anti-waiver" provision that states as follows: "Seller may waive any default before or after the same has been declared without impairing its right to declare a subsequent default hereunder, this right being a continuing one." Significantly, the contract does not have a clause requiring that any modification must be in writing so as to insulate it from modification by the conduct of the parties. *See* Tenn. Code Ann. § 47-50-112(c)(2001)("If any such security agreement, note, deed of trust, or other contract contains a provision to the effect that no waiver of any terms or provisions thereof shall be valid unless such waiver is in writing, no court shall give effect to any such waiver unless it is in writing."). The trial court found that the contract was modified by the conduct of the parties and we hold that the evidence does not preponderate against that finding. We need not address the plaintiff's alternative argument that the late fees constitute an unenforceable penalty.

The defendant offers nothing other than his argument that late charges were not really waived in support of his position that the repossession was not wrongful. Given that we have held the evidence does not preponderate against that underlying finding, we hold that the trial court did not err in finding that the repossession was wrongful.

We will next address the defendant's argument that the trial court erred in not deducting for high mileage and the fact that the Lexus had been in an accident. The mileage argument is based on the statement in trial exhibit 19, submitted as a basis for the value of the car, that the "mileage should be within the acceptable range for the model year." The trial court's award matched the "Clean Retail Value" assigned by exhibit 19 for a 1997 Lexus LS four door sedan. This automobile was approximately 12 years old when the case was tried in January 2009. Per the odometer, its mileage at the time of trial was 227,737. By the unrefuted testimony put on by the plaintiff, some of that mileage was attributable to the defendant after the wrongful repossession. Ignoring the mileage attributable to the defendant, the vehicle still accrued less than 20,000 miles per year. It was within the province of the trier of fact to conclude that such mileage was "within the acceptable range" for a 1997 automobile. We find it notable that the defendant did not present any proof that the mileage was not within the acceptable range.

As to the fact that the automobile had been in an accident, there is nothing in trial exhibit 19 to show that a vehicle cannot qualify as "Clean Retail" after having been in an accident. The defendant had an opportunity to show the severity of the accident but did not. Obviously, the vehicle was repaired after the accident and sitting in the plaintiff's driveway ready for service.

In short, the defendant has offered nothing that convinces us the evidence preponderates against the trial court's finding as to the value of the car on the date it was repossessed. We hold that the evidence does not preponderate against the trial court's finding that the value of the Lexus at the time it was repossessed was $12,225.

We will now address the plaintiff's argument that the trial court short-changed her when it based her loss of use damages on her testimony that she only drove the car on Sundays and refused to compensate her for the other six days. The defendant argues that the evidence supports the trial court's limitation of damages to one day a week. A wrongful repossession is the equivalent of the tort of conversion which is "the appropriation of the thing to the party's own use and benefit, by the exercise of dominion over it, in defiance of [the true owner's] right." ***Barger v. Webb***, 391 S.W.2d 664, 665 (Tenn. 1965); *see* Lloyd, 65 Tenn. L. Rev. at 789-90. Normally, the appropriate measure of damages for the conversion of property is "the value of the property converted at the time and place of conversion, with interest." ***Lance Productions v. Commerce Union Bank***, 764 S.W.2d 207,

213 (Tenn Ct. App. 1988). However, loss of use has been allowed in a limited number of cases as special damages despite the complete destruction or conversion of property, where it is pleaded and proven with reasonable certainty. For example, in ***Tire Shredders, Inc. v. ERM – North Central***, 15 S.W.3d 849 (Tenn. Ct. App. 1999), we allowed a party to claim as damages the lost profits from a shredding machine that was in use when it was destroyed by a fire, in addition to the value of the machine. The machine was of a type that could not be quickly replaced. ***Id.*** at 856. The rationale of the ***Tire Shredders*** opinion was applied in the specific context of repossession of a vehicle in ***Crowe v. First American Nat'l Bank***, No. W2001-00800-COA-R3-CV, 2001 WL 1683710 (Tenn. Ct. App. W.S., filed Dec. 10, 2001), to sustain an award of air travel expenses and rental car expenses but reverse an award of lost profits not proven with reasonable certainty. ***Id.*** at 8-10. It is clear from the cases that to the extent loss of use damages are recoverable, they must be true losses and not something the wronged party could have avoided with reasonable effort and diligence. Given that the plaintiff was awarded the full money value of the automobile on the day it was repossessed, plus prejudgment interest to compensate her for loss of use of her money, *see* ***Hunter v. Ura***, 163 S.W.3d 686, 706 (Tenn. 2005)(purpose of prejudgment interest is to compensate the injured party for loss of use of funds), and the testimony that she had another car she was driving on the day the Lexus was taken, it is clear that the plaintiff was not damaged by every minute of every day that the Lexus was not sitting in her driveway between the date of its repossession and the date of trial. We reiterate that the defendant does not argue that the plaintiff did not sustain any consequential damages. Rather, the defendant argues that the plaintiff did not sustain damages for the six days the car would have been sitting. We agree. We find no merit in the plaintiff's argument that she was entitled to greater damages for loss of use.

We move now to the issue of the availability of punitive damages for wrongful repossession. The trial court stated a finding by clear and convincing evidence that the true motive behind the repossession was retaliation. This would equate with intentional or reckless conduct egregious enough under ***Hodges v. S.C. Toof & Co.***, 833 S.W.2d 896, 901 (Tenn. 1992), to justify punitive damages. The trial court did not state its reasons for its conclusion that "the law in this matter does not provide for punitive damages." The plaintiff argues that having made the necessary factual findings and having confirmed those findings in its order disposing of the motions to alter or amend, the trial court simply committed an error of law. The defendant argues this is a contract action controlled by the sales contract and that punitive damages are not available in breach of contract actions. It is true that punitive damages are generally not available for mere breach of contract. ***Baines v. Wilson County***, 86 S.W.3d 575, 580 n.2 (Tenn. Ct. App. 2002)(*citing* ***Hodges***, 833 S.W.2d at 896). However, where the breach involves "tortious conduct" proven by clear and convincing evidence to be intentional, fraudulent, malicious, or reckless, punitive damages are available. 22 Tenn. Practice, Contract Law and Practice § 12:30 (2009). In fact, a recent Supreme

Court case sustains a $250,000 punitive damage award for an earthmoving contractor's actions that breached its contract with a landowner by intentionally or recklessly burying debris, including huge tires, under the property that the earthmover rented as a parking and maintenance site. ***Goff v. Elmo Greer & Sons Const. Co.***, 297 S.W.3d 175 (Tenn. 2009). Although decided prior to ***Hodges***, at least two cases from this court have recognized that a person who wrongfully repossesses an automobile may be held liable for punitive damages if the circumstances warrant punitive damages. ***McCall v. Owens***, 820 S.W.2d 748, 752 (Tenn. Ct. App. 1991); ***Ball v. Overton Square, Inc.***, 731 S.W.2d 536, 538-39 (Tenn. Ct. App. 1987). ***Hodges*** did not purport to parcel out cases into specific fact patterns and hold that punitive damages would be available in one type case and not another. Instead, ***Hodges*** established a threshold of wrongdoing and burden of proof below which punitive damages would not be allowed. Under the trial court's findings in this case, that threshold was met. Accordingly, we hold that the trial court erred in concluding that the law does not allow punitive damages for the retaliatory repossession of the plaintiff's automobile.

VI.

The judgment of the trial court is reversed insofar as it held that punitive damages are not available in a wrongful repossession case. In all other respects the judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant James Houston, individually and dba Shallowford Auto Sales, Inc. This case is remanded, pursuant to applicable law, for a trial on punitive damages and such other proceedings as are necessary and consistent with this opinion.

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CHARLES D. SUSANO, JR., JUDGE