

Threatening Repo Notice Costs Car Dealer \$669,000

By Rebecca Conklin

A Navajo couple that was \$705 behind in car payments received the following collection notice in the mail:

A cartoonish drawing of two unshaven thugs, labeled "Repo Man J" and "Repo Man K," standing next to a trash can stuffed with a person, presumably a customer. Only the person's legs stick out of the trash can, and a pool of blood forms on the ground. One of the repo men is putting a gun back into his jacket, and the other is holding a club. Above the trash can are two pasted stars, like the stars that cartoonists use to indicate a character has just been hit in the head.

The text says: "If you've mailed your payment, please disregard this notice."

The threatening notice frightened the young couple. It also incensed a federal jury in New Mexico, which awarded \$669,000 to the couple in January. The verdict included \$450,000 in punitive damages against the car dealership that sold the vehicle and the dealer's in-house financing agency.



Meanwhile, Warren says that Jerry Egeland, who owns the dealership and the finance company, came across as deceitful and the jury didn't believe him.

It didn't help that the jury heard Egeland's deposition testimony that he no longer has to buy cars to maintain his inventory because he repossesses so many of his own sales.

Jurors picked up on the difference in Egeland's manner toward his own lawyer and towards Feferman, who cross-examined him. The foreman told Warren the change in Egeland's attitude made the jury question the car dealer's honesty.

The plaintiffs' attorneys also caught some of the salespeople in lies, Warren says.

Warren says one testified that the dealership was expecting a \$2,000 down payment on the first truck the couple chose, but the plaintiffs' attorney produced a receipt from the dealer that stated "toward \$1,000 down payment."

Salespeople also claimed they never had told Lee and Garcia that the four-wheel drive on the Chevy Blazer worked, but the plaintiffs showed the jury a purchase order that described the vehicle as "4x4."

'Bait and Switch'

The plaintiffs, Norvin Lee and Bernita Garcia, were living on the Navajo reservation in 1996 when they began looking for their first vehicle. They went to Farmington, N.M., just over the reservation border, and stopped at Friendly Motors, a dealership owned by Gallup Auto Sales Inc.

They chose a 1989 truck, but they didn't have enough money for a down payment, says their attorney, Susan Warren, who tried the case with Richard Feferman. The dealership made an offer that Warren says is common along the reservation borders: The dealer would not sell the truck to anyone else if the couple periodically brought money toward the down payment, and when the customers accumulated \$1,000, they could finance the rest and take the truck.

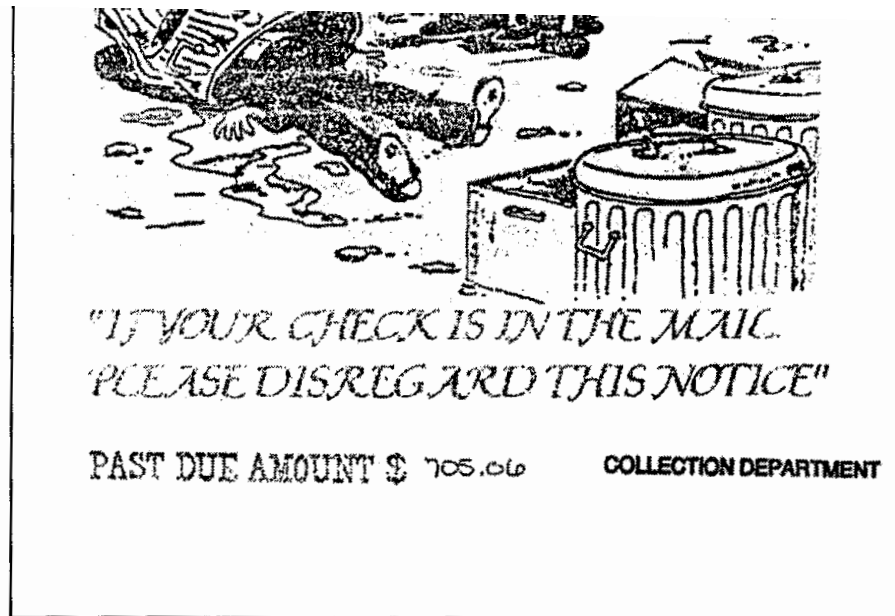
But what ensued was a classic "bait and switch" tactic, says Warren.

As promised, the couple delivered money toward the down payment, Warren says. But when they reached \$1,000, the dealership told them their credit wasn't good enough to buy the truck. The dealer would not return the couple's down payment but pointed out a separate lot where they could choose a vehicle.

The couple settled on a 1985 Chevy Blazer. The odometer read 67,000 miles, and the salespeople told the couple that the engine had been overhauled and the truck's four-wheel drive worked.

None of these representations turned out to be true, Warren says. After buying the Blazer, Lee and Garcia discovered that the four-wheel drive shaft was missing, the engine had not been overhauled and the miles were wrong. The odometer already had turned over once and was no longer working, so the vehicle had at least 167,000 miles, and perhaps more, when the couple bought it.

Warren says the dealer had bought



and sold the Blazer several times and, thus, knew the vehicle's history and true condition, as well as the odometer situation. At trial, she presented a title history showing that the dealership knew what was going on with the vehicle.

A few months after the couple bought the vehicle, it broke down, Warren says. Lee and Garcia took it to a repair shop and were told the Blazer needed an engine overhaul. They planned to pay for the work themselves.

But with the added expense of the repairs, the couple got behind in car payments to Montana Mining, the in-house finance company of Friendly Motors.

That's when the unsettling collection notice arrived. And a couple of weeks later, two repossession men showed up at their house, located on an isolated dirt road 15 miles from the nearest police station. Their home does not have a telephone or electricity, Warren says. Lee and Garcia felt in no position to challenge the repo men.

A debtor must sign a consent form before a creditor can repossess property on an Indian reservation, Warren explains. But Lee didn't feel he could do anything but sign the form that the repo men presented to him.

Lee and Garcia brought their story to Feferman, who then teamed up with Warren to try the case. They filed suit in federal court under the Federal Odometer Act and several state statutes.

Defense attorney Thomas Hynes did not return phone calls seeking comment on the case.

The Trial

Based on a post-trial interview with the jury foreman, Warren says the key to winning the case was that "our clients were so good and the dealer was so bad."

The couple was young, naive and honest, Warren says.

"They didn't even know what would help them and what would hurt them in testimony," she says.

Case Was Thrown Out

Before the case reached trial, defense attorney Hynes filed a motion to dismiss on the grounds that the U.S. Secretary of Transportation had decreed that vehicles more than 10 years old did not have to comply with the disclosure requirements of the Odometer Act.

The court agreed with the defense and dismissed the case. The remaining state law claims were not under the court's jurisdiction, the court ruled.

Warren and Feferman brought in Santa Fe appeals specialist Richard Rubin, who convinced the Tenth Circuit to remand the case to U.S. District Court.

When the case came to trial in January, the jury ruled that the defendants had violated New Mexico tort law in sending the collection letter and that they were liable for fraud, violation of the federal Odometer Act and violations of the state Unfair Trade Practices Act.

The verdict broke down into several parts, including \$100,000 in compensatory damages and \$200,000 in punitive damages for fraudulent misrepresentation about the condition of the vehicle, \$100,000 in compensatory damages and \$250,000 in punitive damages for the collection notice and \$19,200 for violation of the Federal Odometer Act.

Plaintiffs' attorneys: Susan M. Warren and Richard N. Feferman, Law Offices of Richard N. Feferman, Albuquerque, N.M.; and Richard Rubin, Santa Fe, N.M.

Defendants' attorney: Thomas Hynes; Hynes, Hale & Gurley; Farmington, N.M.

The case: U.S. District Court of Albuquerque, N.M., Norvin Lee and Bernita Garcia v. Gallup Auto Sales Inc. and Montana Mining Inc.; Case no. CIV-96-1525-WWD; Magistrate Judge William Deaton.