

Creditors' Rights and the Constitution: A Difficult (But Not Impossible) Connection to Make

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You may not associate creditors' rights with the United States Constitution. After all, when people think of constitutional rights, they generally think of free speech, freedom of the press, trial by jury, etc. The Constitution also protects certain property rights, though, which means that creditors may find it relevant in some cases. For example, the Fourth Amendment prohibits the government from engaging in unreasonable searches and seizures. The Fifth Amendment prohibits the government from taking private property for public use without just compensation. The Fourteenth Amendment prohibits the government from depriving a person of property without due process of law. Application of these protections to creditors in consumer cases is tricky, though, to say the least. In three recent cases, only one creditor prevailed on any of its constitutional claims and then only prevailed on one of its three claims. Here's what happened in each of the three cases.

New York, NY

In one case, the City of New York operated a "Boot and Tow" program to enforce parking and traffic camera tickets. Pursuant to the program, the city had Five J's Automotive Ltd., a towing company, tow and impound Melende Chery's vehicle after she accrued over \$350 in unpaid tickets. Mercedes-Benz Financial Services USA, LLC, held a security interest in Chery's vehicle pursuant to a retail installment sale contract on which Chery had defaulted before Five J's towed the vehicle. Lienholders may reclaim towed and impounded vehicles, but to do so they must pay the unpaid tickets and towing and storage fees. Mercedes-Benz refused to pay the fees, so the city auctioned off Chery's vehicle. After deducting the amount of unpaid tickets and fees, the city remitted the remaining sale proceeds to Chery. Mercedes-Benz sued the city and the towing company. Mercedes-Benz brought claims against both defendants under 42 U.S.C. § 1983, alleging that the defendants' towing, impoundment, and sale of the vehicle violated the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution.

The U.S. District Court for the Southern District of New York concluded that the defendants violated Mercedes-Benz's due process rights under the Fourteenth Amendment. The court found that both defendants were liable for the due process violation as they are both state actors under Section 1983, noting that the towing company undertook its alleged unconstitutional conduct—towing and impounding the

vehicle—in concert with the city and under its authority and, therefore, was acting under color of state law. The court then determined that Mercedes-Benz had a property interest in the vehicle protected by the Fourteenth Amendment and that the defendants deprived it of that property interest. The court reasoned that the defendants deprived Mercedes-Benz of its property right to the value of the vehicle upon its seizure because Mercedes-Benz could not thereafter repossess it without paying the various towing, storage, and unpaid ticket fees. The court then found that the defendants denied Mercedes-Benz due process because they did not provide it with some form of hearing—either pre- or post-seizure—before it was deprived of its property interest. Because the "Boot and Tow" program did not provide Mercedes-Benz with the opportunity to challenge the conditions of the vehicle's release with some form of hearing, the program violated Mercedes-Benz's rights under the Due Process Clause. Accordingly, the court granted Mercedes-Benz's motion for summary judgment on the Fourteenth Amendment claim.

However, the court concluded that the defendants did not violate Mercedes-Benz's Fifth Amendment rights against uncompensated takings, concluding that Mercedes-Benz did not adequately allege a "taking." Additionally, the court concluded that the defendants did not violate Mercedes-Benz's Fourth Amendment rights against unreasonable seizure of property. The court found that the Fourth Amendment did not necessarily protect Mercedes-Benz's interest in the vehicle at the time it was seized, noting that other courts have concluded that the Fourth Amendment does not necessarily protect a lienholder's rights at the time of the seizure even though the lienholder may have been entitled to repossess the vehicle at the time it was seized. Even assuming Mercedes-Benz had a Fourth Amendment interest in the vehicle, the court found that the seizure did not violate that interest because the seizure was reasonable, as the towing of vehicles based on the nonpayment of valid parking and traffic tickets and authorized under city laws is reasonable under the Fourth Amendment. Therefore, the court granted the defendants' motion for summary judgment on the Fourth and Fifth Amendment claims.

Borough of Wyoming, PA

In a second case, Toyota Motor Credit Corporation held a security interest in Gerald Clisham's vehicle. Police officers of the Borough of Wyoming, Pennsylvania, seized the vehicle during the course of their law enforcement duties. At that time, Clisham had already defaulted on his credit agreement with TMCC. The Borough of Wyoming used Bovani's Towing and Service Inc. to regularly tow, store, and eventually dispose of vehicles that its police department seized. Bovani's held the seized vehicle until the owner paid its towing and storage fees. If no one paid the fees, Bovani's sold the vehicle to recoup its expenses. When TMCC discovered that Clisham's vehicle had been seized, it demanded that Bovani's release the vehicle. Bovani's refused to release the vehicle unless TMCC paid its towing and storage fees. TMCC did not pay those fees, so Bovani's did not release the vehicle. TMCC contended that it was not given any notice, hearing, or compensation with regard to the vehicle by the Borough of Wyoming or Bovani's. Therefore, TMCC sued the Borough of Wyoming and Bovani's under 42 U.S.C. § 1983, alleging violations of the Fourth, Fifth, and Fourteenth Amendments. The Borough of Wyoming moved for summary judgment, and the court granted its motion.

TMCC argued that the towing and storage of the vehicle, conditioning its release on the payment of storage fees, and the eventual sale of the vehicle constituted an unreasonable seizure of property under the Fourth Amendment. The court disagreed, concluding that the alleged seizure of the vehicle fell within the "community caretaker" exception to the Fourth Amendment's requirement that police obtain a warrant based on probable cause to justify a seizure. The community caretaker exception permits police to remove and impound vehicles that impede traffic or threaten public safety and convenience. In this case, the police stopped Clisham while he was driving his vehicle and learned that his driver's license was suspended. Clisham was unable to find someone to retrieve his vehicle, so the police had Bovani's tow the vehicle because it was blocking traffic. Moreover, the court found that the towing and storage of the vehicle did not constitute a "seizure" because it did not interfere with TMCC's *possessory* interest in the vehicle. At the time of the towing and storage, TMCC merely had a *nonpossessory* security interest in the vehicle. TMCC may have had a right to self-help repossession at that point because of Clisham's default, but it never took possession of the vehicle at any point. Therefore, the court granted summary judgment in favor of the Borough of Wyoming with respect to TMCC's Fourth Amendment unreasonable seizure claim.

The court also granted summary judgment to the Borough of Wyoming with respect to TMCC's Fifth Amendment claim. TMCC argued that the towing, storage, and sale of the vehicle constituted a taking for public use without just compensation. The court disagreed, siding with prior court decisions holding that the towing and storage of vehicles pursuant to police powers does not constitute a taking of private property for public use. Therefore, the court granted summary judgment in favor of the Borough of Wyoming with respect to TMCC's Fifth Amendment takings claim.

The court granted summary judgment to the Borough of Wyoming with respect to TMCC's Fourteenth Amendment claim as well. In order to prevail on a Fourteenth Amendment due process claim, a plaintiff must show the deprivation of a cognizable property interest without constitutionally sufficient process. The court found that a security interest is a property interest protected by the Fourteenth Amendment. The court concluded that TMCC established a deprivation of its property interest in the vehicle. The court found that the towing and storage of the vehicle impaired TMCC's property interest because it deprived TMCC of the collateral for its lien while the collateral's value depreciated. Bovani's towing and storage fees also impaired TMCC's property interest by effectively subordinating the priority of TMCC's lien. In addition, the court found that the issuance of a certificate of salvage to Bovani's after it was initially unable to sell the vehicle at a public auction constituted a deprivation of TMCC's property interest. Despite finding that TMCC's due process rights were violated, the court granted summary judgment in favor of the Borough of Wyoming with respect to the Fourteenth Amendment claim after conducting an analysis of whether the municipality could be liable under 42 U.S.C. § 1983, which establishes a private right of action for damages against certain state officials or entities that violate a constitutional or statutory right. In order to state a claim under Section 1983, a plaintiff must allege that it was injured by either a state actor or a private party acting under color of state law. The court concluded that there was no state action by the Borough of Wyoming under this statute.

Finally, in a third case, Mercedes-Benz held a lien on a vehicle that was towed and impounded by the City of Chicago. Mercedes-Benz attempted to reclaim the impounded vehicle but was informed by a city employee that the vehicle could not be released because Mercedes-Benz had not submitted all the required documentation. The city eventually disposed of the vehicle. Mercedes-Benz sued the city under 42 U.S.C. § 1983, alleging that the city's failure to relinquish the vehicle infringed upon Mercedes-Benz's due process rights under the Fifth and Fourteenth Amendments. The city moved to dismiss the complaint.

The U.S. District Court for the Northern District of Illinois granted the motion to dismiss. Mercedes-Benz sought to hold the city liable under Section 1983 for its alleged constitutional injuries. A city cannot be held liable for injuries inflicted solely by its employees. Instead, a plaintiff must allege that its constitutional injury resulted from an official, express municipal policy, widespread custom, or deliberate act of a policymaker for the city. The municipal policy or custom must be the "moving force" behind the constitutional violation. The court assumed, for the purpose of resolving the motion to dismiss, that Mercedes-Benz properly alleged that it suffered a deprivation of its due process rights under the Fifth and Fourteenth Amendments.

However, the court concluded that the city could not be held liable under Section 1983. Mercedes-Benz argued that the city caused its injuries through its policy of providing city employees with too much discretion to deny lienholders' attempts to reclaim impounded vehicles. The court disagreed, finding that Mercedes-Benz failed to sufficiently allege that there was specific, express language in the city's policies or procedures that caused its alleged constitutional injuries. Mercedes-Benz also argued that the city caused its alleged injuries through its failure to enact appropriate policies and procedures establishing the forms and processes required for lienholders to reclaim impounded vehicles. The court disagreed with this argument as well, finding that Mercedes-Benz failed to allege that the city knew that its employees' actions risked violating the Constitution, this risk was high, the need for additional policy was obvious, and the city still failed to act.

Analysis

It's difficult to know for certain why Mercedes-Benz prevailed under its Fourteenth Amendment claim in the New York case but the rest of the constitutional claims were losers. It may be that the Pennsylvania court was reluctant to interfere with law enforcement, but that explanation doesn't account for Mercedes-Benz's loss in Chicago. The Chicago city employees found problems with Mercedes-Benz's documentation, whereas in New York, Mercedes-Benz simply refused to pay unpaid tickets and fees, which may explain the difference between the two Mercedes-Benz cases. Another possible explanation for the different results is that Mercedes-Benz demonstrated action by the state in the New York case to a degree that the creditors in the other two cases did not, bolstering its case under 42 U.S.C. § 1983. One thing that is consistent among the cases is that the courts were skeptical of the creditors' Fourth Amendment claims, either expressly or implicitly because the creditors did not possess the vehicles when they were seized. The courts also rejected the idea that impoundment and sale of vehicles, at least in these cases, constituted "takings" under the Fifth Amendment with

respect to the lienholders. As we see in these cases, constitutional claims are possible in suits by lienholders against governmental entities, but winning them can be an uphill battle. ❏

Mercedes-Benz Financial Services USA, LLC v. City of New York, 2025 U.S. Dist. LEXIS 43551 (S.D.N.Y. March 11, 2025); *Toyota Motor Credit Corporation v. Borough of Wyoming*, 2025 U.S. Dist. LEXIS 62540 (M.D. Pa. March 31, 2025); *Mercedes-Benz Financial Services USA v. City of Chicago*, 2025 U.S. Dist. LEXIS 75321 (N.D. Ill. April 21, 2025).

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