

## **Extra Repossession and Foreclosure Problem**

On June 1, Jake purchased from Dealer, and took possession of, a portable cement mixer for use in Jake's Chicago home remodeling business, which he operated as a sole proprietor. The price was \$20,000, to be paid in installments, and Jake gave Dealer a security interest in the cement mixer. Dealer did not file a financing statement.

The promissory note Jake signed provided for accelerated payments in the event of a default, and the security agreement contained a provision by which Jake waived notice of sale in the event of repossession by Dealer.

On July 1, Jake obtained a \$20,000 business loan from Bank and gave Bank a security interest in all present and after-acquired equipment. Bank perfected its security interest by properly filing a financing statement.

Jake failed to make any payments to Dealer, and, on September 1, Dealer properly notified Jake of the default, accelerated the indebtedness in accordance with the note and security agreement, and demanded that Jake return the cement mixer. Jake refused. Dealer then contracted with Speedy Repo, Inc. to repossess the cement mixer.

Anticipating trouble, Speedy Repo hired Officer, a local off-duty police officer, to accompany Speedy Repo's employee in carrying out the repossession. They found the cement mixer on a public street in front of a house where Jake was repairing the driveway. As they were hitching the cement mixer up to Speedy Repo's truck, Jake confronted them and told them to leave it alone and go away. Officer displayed his police badge and revealed his service revolver and told Jake that they were authorized by Speedy Repo to take the cement mixer. Jake, afraid of a violent confrontation, shrugged his shoulders and walked away.

A week later, Dealer sold the cement mixer for \$14,000. Dealer, relying on the waiver contained in the security agreement, did not give notice of the sale to Jake. Nor did Dealer give notice of the sale to Bank because Dealer had no actual knowledge of Bank's security interest. Dealer now seeks to recover from Jake the \$6000 balance owed.

- 1. What rights, if any, does Jake have against Dealer, Speedy Repo, or both arising from the way the repossession was carried out?**
- 2. Does Dealer have a right to a deficiency judgment against Jake, and, if so, how should the amount be calculated?**
- 3. What rights, if any, does Bank have against Dealer?**
- 4. Would your answer to the immediately preceding question change if Dealer had filed a financing statement in June?**