

In the United States Bankruptcy Court

for the Northern District of Iowa

CHARLES A. NORENBERG and
BARBARA E. NORENBERG

Debtor(s).

Bankruptcy No. 87-00970-S

Chapter 13

CHARLES A. NORENBERG and
BARBARA E. NORENBERG

Plaintiffs pro se

Adversary No.

vs.

JIM BREYFOGLE d/b/a Jim's
Garage

Defendant(s)

RULING: MOTION FOR RELEASE

The matter before the Court is the debtors' "Motion for Release of Dodge 4X4 pickup and Riding Lawnmower.

Hearing was held on December 11, 1987. Debtor Charles A. Norenberg appeared pro se. Attorney Alvin J. Ford appeared for the defendant Jim Breyfogle.

While described as a "motion", this matter is in the nature of an adversary proceeding seeking a turnover of property of the estate. It is a core proceeding under 28 U.S.C. section 157(b)(2)(E).

Having examined the evidence and having considered the statements and briefs of the parties, the Court now issues the following Ruling which shall constitute Findings of Fact and Conclusions of Law pursuant to Bankr. R. 7052.

FINDINGS OF FACT

1. The debtors, Charles A. and Barbara E. Norenberg, filed their joint voluntary petition under Chapter 13 of the Code on April 22, 1987.
2. Charles Norenberg (Norenberg) is a carpenter who earns money doing various small carpentry jobs including shingling, insulation and remodeling.
3. Norenberg lives in Holstein. He travels by car to his work sites. He can transport small tools and materials in his car, but he needs a larger vehicle, such as the 4x4 Dodge pickup, to haul large tools, equipment and materials.
4. A credit union may have a lien on the pickup. There was no evidence introduced at trial confirming this. Norenberg believes he has a loan against the vehicle, but he does not know the whereabouts of the vehicle title nor whether the lien of the credit union is noted on it.
5. Mr. Norenberg took the Dodge pickup to Jim Breyfogle (Breyfogle) d/b/a Jim's Garage in Holstein for repair.
6. Breyfogle's shop completed the repairs, and the vehicle was ready for Norenberg approximately March 7, 1986.
7. The repairs requested by Norenberg included a "valve job", the installation of a new carburetor, the repair of the ignition, and adjustment to the engine's timing.
8. Breyfogle completed the work and produced an invoice for it totaling \$677.34 (defendant's exhibit no. 1).
9. Certain repairs were done to the vehicle by Breyfogle which were not requested by Norenberg. These included installation of the following: two belts priced at \$23.80; an air filter priced at \$8.23; and a drain cock priced at

- \$1.65. Labor costs for these replacements totaled \$10.55. Total charges to Norenberg for the non-requested work were \$44.23.
10. The invoice of \$677.34 provided on or about March 7, 1986 was in three parts, an original and two carbon copies, no part of which was provided to Norenberg until the date of the hearing. Breyfogle believed that Norenberg would come in to pay the bill.
 11. Norenberg disputes the invoice because, as he testified, the vehicle did not "run right" after he got it back.
 12. Norenberg did not pay the bill.
 13. In early 1987, Norenberg brought the pickup back and complained of further problems. Norenberg told Breyfogle that he wanted the earlier work re-done correctly.
 14. Breyfogle examined the motor vehicle and determined that there was a problem with the cam shaft.
 15. Breyfogle installed a cam shaft. There was no charge for the labor although Breyfogle did charge Norenberg for some but not all parts used in the repair. The parts were charged at Breyfogle's cost. The total amount of the invoice was \$166.47. (Defendant's exhibit no. 2).
 16. Norenberg testified that the job initially done by Breyfogle was not done properly, and therefore he disputes \$395.00 of the total billing.
 17. Breyfogle testified that he was present when certain initial repair work was done, and that had there been a problem with the cam shaft he would have known about it. He said there was no cam shaft problem at the time of the first repairs.
 18. The costs of repair as shown on defendant's exhibits 1 and 2 were the reasonable costs of repair for the work done.
 19. There was no evidence introduced in court indicating that Jim Breyfogle improperly repaired the motor vehicle on the first occasion or that any labor or parts provided by Breyfogle led to the difficulties with the cam shaft.
 20. Norenberg attempted to obtain possession of the truck, but Breyfogle held the pickup in his possession and would not release it without payment of the two invoices.
 21. There was a riding mower located in the bed of the pickup truck when it was taken to Breyfogle's. At the time of the hearing, Breyfogle had possession of the lawnmower. He did no repair work to it.
 22. There is presently no casualty insurance on the pickup.
 23. The complaints by Norenberg to Breyfogle about the truck's not "running right" after the initial repairs were made to Breyfogle eight to ten months after those repairs.

DISCUSSION

Mr. Norenberg by his "motion" seeks an order of the court that Breyfogle release to him the 1979 Dodge 3/4-ton 4x4 pickup truck.

Norenberg also seeks release of the lawnmower. On December 11, 1987, this court, in its order following hearing, disposed of that issue by ordering the return of the lawnmower.

Norenberg also seeks an order of the court that Breyfogle deliver to him a written billing explaining the specific work done including all parts purchased and the total number of hours of labor spent repairing the vehicle.

This issue is moot as copies of the bills were provided to the debtor at the hearing on December 11, 1987.

Pleadings by pro se litigants are entitled to liberal construction.

The court accepts the motion of the debtor as an adversary proceeding seeking the following relief: turnover of property of the estate pursuant to 11 U.S.C. section 542(a).

By its reference to 11 U.S.C. section 363(b)(1), Bankruptcy Code section 1303 gives to a Chapter 13 debtor, exclusive of the trustee, the right to use property of the estate.

Property of the estate is broadly defined in the 11 U.S.C. section 541. The pickup truck is property of the estate.

Breyfogle resists the motion, asserting an artisan's lien on the vehicle; he demands adequate protection of this interest.

Breyfogle's claim of an artisan's lien is based on Iowa Code section 577.1 which states as follows:

"Any person who renders any service or furnishes any material in the making, repairing, improving, or enhancing the value of any inanimate personal property, with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for the service and material while such property is lawfully in the person's possession, which possession the person may retain until such compensation is paid, but such lien shall be subject to all prior liens of record, unless notice is given to all lien holders of record and written consent is obtained from all lien holders of record to the making, repairing, improving, or enhancing of the value of any inanimate personal property and in this event the lien created under this section shall be prior to liens of record."

The Court has previously found that Breyfogle repaired the vehicle at Norenberg's request and the requested repairs had a reasonable value of \$799.58. There was no evidence of an implied assent to the non-requested repairs.

Breyfogle has lawful possession of the vehicle and asserts an artisan's lien.

The Court finds that as to Mr. and Mrs. Norenberg, Breyfogle has a valid but unperfected artisan's lien on the vehicle to the extent of \$799.58.

Norenberg in his motion has offered to pay \$90.00 to Breyfogle in full payment of the repair work. The Court takes this to be an offer of adequate protection of Breyfogle's interest in the truck.

Breyfogle is entitled to adequate protection of his possessory interest in the vehicle. 11 U.S.C. section 363(e); United States v. Whiting Pools, 103 S.Ct. 2309, 2317 (1983).

The offer of protection is not adequate in that it does not propose to pay the full amount of the lien at once or over time, nor does it consider the uninsured status of the motor vehicle.

If the uninsured vehicle were returned to the debtors, and if the vehicle were destroyed or damaged by accident, there would be no insurance to compensate the lien holder.

The Court, therefore, finds that the offer of adequate protection is insufficient to protect Breyfogle's interest in the property.

CONCLUSIONS OF LAW

James Breyfogle has a valid, unperfected artisan's lien on the 4x4 pickup truck of the debtors to the extent of \$799.58 according to Iowa Code section 577.1.

The debtors' turnover request under 11 U.S.C. section 542(a) should be denied because the offer of protection of the debtors to Breyfogle under 11 U.S.C. section 363(e) is inadequate.

Judgment shall enter accordingly.

SO ORDERED ON THIS 13th DAY OF JANUARY, 1988.

William L. Edmonds
Chief Bankruptcy Judge