

In the United States Bankruptcy Court

for the Northern District of Iowa

CREGAR'S AUTOWERKS INC.
Debtor(s).

Bankruptcy No. L92-00872C
Chapter 11

ORDER RE: NOTICE AND REPORT OF SALE

On December 7, 1992, case trustee Thomas G. McCuskey filed and served a "Notice and Report of Sale of Property." He advised parties-in-interest of his intent to sell at private sale six motor vehicles which he believed to be property of the estate. The six included a 1985 Ford Bronco 4 x 4, VIN 1FMEV15H4FLA32810. The only objection to the sale was filed by William Brooker, an officer and director of the debtor. Brooker contends that the Bronco is his personal property and thus cannot be sold as property of the estate. Hearing on the proposed sale and objection was held on February 9, 1993, in Cedar Rapids.

At the outset of the hearing, counsel for the parties agreed that it would be necessary for the court to determine the ownership of the Bronco in deciding on the propriety of sale. Counsel waived any objection to the matter not being decided in the context of an adversary proceeding as normally required under Fed. R.Bankr. P. 7001(2).

The schedules and statements in this case were signed by Brooker under oath. They listed the Bronco in two places: in the statement of affairs as bailed property, owner "unknown", and as personal property of the debtor. Brooker admits that he signed the schedules but he says he did not read them closely prior to signing because he was in ill health with a heart problem. At the time the trustee commenced his duties, the Bronco was on the premises of the debtor. Although some vehicles located at the dealership bore signs indicating "Not for Sale," the Bronco did not. Until the trustee's notice of sale was served, Brooker had not advised the trustee that the Bronco was his personal property. Dan Costello, employed as liquidation agent by the trustee, asked Brooker if the Bronco were part of the debtor's inventory; Brooker responded that the Bronco was a substitute for a Jeep Wagoneer that the debtor owned and Brooker drove.

Neither Costello nor McCuskey could locate the title to the Bronco. They sought the help of the state police in locating the prior owner. Their investigation led them to Patricia Evans Kopp of Sugarland, Texas. Mrs. Kopp told Costello that her husband had sold the Bronco. Neither she nor her husband was called to testify. Believing the Bronco was property of the estate, McCuskey completed the necessary paperwork and obtained an Iowa title to the vehicle.

Brooker admits he told Costello that the Bronco was a substitute or replacement for a Jeep Wagoneer owned by the debtor. But he says that meant only that he bought the vehicle personally because he needed a vehicle after the company-supplied vehicle was sold. Brooker noticed the Bronco parked along a street with a "For Sale" sign on it. He called the phone number on the sign and talked to a man whose spouse owned the Bronco. He reached agreement with the man to purchase the Bronco for

\$4,500.00. He exchanged a cashier's check for that amount for possession of the vehicle and a Texas Certificate of Title showing Patricia Evans Kopp as the owner. When Brooker received the title, it was executed in the transfer section by Kopp, with the name of the assignee left blank. Kopp's signature was not notarized as apparently required by the title, so there is no way to tell from the document exactly when she executed it. Brooker filled in his name and address under the transferee section. There is no evidence as to exactly when that was done.

Brooker obtained the money to buy the cashier's check by securing a home owner's equity loan from a bank. The loan proceeds were placed in Brooker's personal checking account, and his check number 3096 was used to purchase the cashier's check on which Brooker was shown as the "remitter." The cashier's check was issued May 13, 1992. The debtor's case was converted from chapter 11 to chapter 7 on May 29, 1992.

Based on a preponderance of the evidence, the court concludes that the Bronco is the property of Brooker, not the estate. The evidence is uncontroverted that Brooker used his home as collateral for a loan to obtain the funds to buy the Bronco. He paid for the cashier's check with a personal check. There is no evidence that he intended to buy the Bronco for the debtor or that he gave it or sold it to the debtor.

That is not to say that there is no evidence supporting the trustee's position. Importantly, the schedules signed by Brooker show the vehicle as the debtor's property. Also, Brooker made no attempt to claim the vehicle until the notice of sale was served, approximately seven months after the filing of the case. The trustee also points to Brooker's statement to Costello that the Bronco was a substitute or a replacement for a debtor-owned vehicle. Yet this statement is ambiguous; one could infer from it that the Jeep was exchanged by debtor for the Bronco. But one can also take the statement to mean, as Brooker argues, that he bought the Bronco to replace his company car. On balance, the court cannot conclude that the evidence leads solely to the conclusion that the vehicle was purchased by the debtor or that the evidence provides the basis for estopping Brooker from claiming ownership.

The case is close, and although there is evidence supporting each side, the court believes that Brooker's evidence that he purchased the Bronco with his own money obtained through a home equity loan most strongly supports the court's decision that the Bronco is Brooker's personal property. As it is not property of the estate, the trustee cannot sell it.

The taxation of costs is within the discretion of the court. Although Brooker's objection to the sale will be sustained, costs will be taxed against him. The main reason for this decision is Brooker's testimony that he signed the schedules without reading them. The listing of the Bronco as debtor's property led to the trustee's reasonable effort to sell the vehicle. The trustee's position at trial was reasonable and was supported by evidence. Brooker should bear the cost of the action brought on in part by his indifference to his oath as to the truth of the schedules. Accordingly,

IT IS ORDERED that William Brooker's objection to the sale of the 1985 Bronco is sustained. The trustee may not sell the vehicle. Costs of this action are taxed to William Brooker.

So ORDERED ON THIS 17TH DAY OF FEBRUARY, 1993

William L. Edmonds
Chief Bankruptcy Judge