

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In Re

IN BANKRUPTCY

ROBERT F. COSTA, d/b/a
Costa's Coach Shop and
CATHERINE M. COSTA,

No. 80-0007

Debtors

THORP FINANCE CORPORATION,

Plaintiff

vs.

ROBERT F. COSTA, d/b/a
Costa's Coach Shop and
Catherine M. Costa

Defendants.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The plaintiff, Thorp Finance Corporation, having duly filed a Complaint asking that the automatic stay order, effective upon the filing of the Petition in Bankruptcy, be lifted as to certain property set forth in said Complaint; and the matters having been resolved as to all of the items of property excepting one 1967 Chevrolet convertible, ID# 124677N200138, which is commonly referred to as a Camaro panel truck, and which was licensed with the Motor Vehicle Department of the State of Wisconsin in the name "Costa's Coach Shop", and which said truck was claimed exempt by Mrs. Costa as being part of the tools of trade under the Federal Exemption Statute; and the debtors having duly filed an Answer admitting certain allegations of the Complaint and setting up as affirmative defenses that the mortgage and security interest of the plaintiff are void under the terms of the Federal Exemption Statute, and praying that the Court declare the property exempt from execution, and for such other and further relief as the Court may deem just and equitable; and the matter having been noticed for pre-trial hearing, and a hearing having been held

on February 28, 1980; and plaintiff having appeared by Jack F. Owen, its attorney, and the debtors having appeared and by their attorney, John E. Danner; and after a conference thereon it was stipulated to submit memorandums to the Court as to the facts and law; and the Court having heard the arguments of counsel, and having duly considered the subsequently filed memorandums, and having examined the record file and the schedules in said matter, FINDS:

1. That Robert F. Costa and Catherine M. Costa, as debtors, duly filed a Petition in Bankruptcy on November 14, 1979; that Arthur L. Eberlein was appointed Interim Trustee and the first meeting of creditors was held at the city of Wausau, Wisconsin, on December 13, 1979; that thereafter amendments to the schedules were filed by debtors' attorney; and on December 19, 1979, the Trustee filed a Report of No Asset in said matter.

2. That it appears from the statement of affairs pertaining to the debtor, Robert F. Costa, filed with the schedules that the business referred to as "Costa's Coach Shop" is a sole proprietorship; that in answer to Question #1 (b) in the statement of affairs pertaining to the debtor, Catherine M. Costa, her occupation is listed as "fishing guide", and in answer to Question #21 as to being a member of any partnership, corporation etc., "none."

3. That the value of said panel truck is stated as being either the sum of \$1,000 or \$1,200.

4. That counsel for the plaintiff in his Statement of Facts states as follows:

"Prior to filing Petition No. 79-01391, the debtors conducted a public auction on September 29, 1979, wherein they had permission from various creditors, including Thorp Finance Corporation, to sell secured property providing the proceeds were applied against the accounts which held the particular security. At the auction, a bid of \$3,000.00 was received on the 1967 Chevrolet but the debtors' attorney refused such bid as inadequate."

5. That the debtor, Catherine M. Costa, was not a partner in said business as stated in debtors' brief and therefore did not own the said truck involved as tools of trade under the Exemption Statute; that said panel truck was owned by her husband, Robert F. Costa, as sole proprietor of said business, and that the lien of the plaintiff herein is not subject to being lifted under the Exemption Statute.

CONCLUSIONS OF LAW

That an Order be entered granting the plaintiff's prayer for relief to lift the stay in said proceedings and determining that the following described property, to-wit: the 1967 Camaro Truck, ID# 124677N200138, is not exempt from execution, and is subject to the lien of the plaintiff herein.

O R D E R

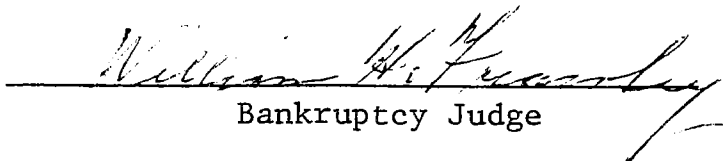
NOW, THEREFORE, IT IS ORDERED:

1. That the automatic stay, effective upon the filing of the Petition in Bankruptcy, is hereby forthwith lifted to permit the plaintiff to commence the necessary foreclosure proceedings as to said 1967 Camaro Truck, ID# 124677N200138.

2. That said vehicle herein described is not exempt from execution in these proceedings under the Bankruptcy Laws and is subject to the lien of the plaintiff herein.

Dated: March 27, 1980.

BY THE COURT:


Bankruptcy Judge