

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

In Re

RON BROWN AMC-JEEP, INC.,

Debtor

RON BROWN AMC-JEEP, INC.,

Plaintiff

vs.

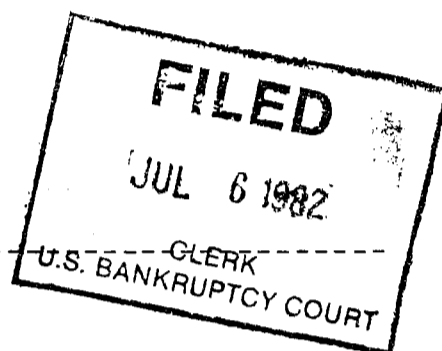
RBS BODY SHOP, INC.

Defendant.

In Bankruptcy

No. WF11-81-00741

Adversary No. 81-0198



FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER

The plaintiff having filed a complaint alleging that the defendant is indebted to it for certain parts, supplies and material sold to the defendant; and defendant having filed an answer denying the allegations of the complaint and alleging a counterclaim in the sum of \$4,500.00; and the matter having come on for hearing before the court, and the court having heard the testimony of the witnesses, and having examined the various exhibits and books of account and running accounts of the parties, and the attorneys having made their arguments and having filed written briefs, and upon all of the record, file and proceedings herein and being fully advised in the premises, FINDS:

1. That the above named debtor-plaintiff filed a petition for relief under Chapter 11 of the U. S. Bankruptcy Code on the 29th day of April, 1981, at 8:05 a.m. (This time of filing is important as will be hereinafter noted.)

2. That the debtor is a debtor in possession having filed under said Chapter 11 proceedings.

3. That the defendant was the auto body shop that did all of the work on the vehicles requiring body repairs that were brought into the Ron Brown AMC-Jeep, Inc.

4. That parts and supplies necessary to do this body work were obtained by the defendant from the plaintiff and each of the parties kept accounts of the amounts owed to it by the other.

5. That from time to time over the years the parties' representatives met and struck a balance and offset of accounts and, if necessary, one would pay the additional amount to zero out the accounts.

6. That in April, 1981, prior to the filing of the Chapter 11 proceedings, Sally Zuelsdorff, the bookkeeper for the plaintiff, met on different occasions with Mark Matthiae, the manager of the defendant body shop company.

7. That each of the above named representatives had authority to arrive at the amounts due the other and to settle the accounts from time to time.

8. That apparently a number of meetings were held during the month of April, commencing on April 2 through April 29, 1981.

9. That as shown by Exhibit 1, it was determined that as of March 31, 1981, the plaintiff owed the defendant the sum of \$9,493.11, and that the defendant owed the plaintiff the sum of \$13,836.19, a difference of \$4,343.08.

10. That on the 28th day of April, 1981, Mr. Matthiae advised Ms. Zuelsdorff that he would deliver a check to her in the sum of \$4,343.08 to zero said account, allowing the offsets relative to said running accounts.

11. That Ms. Zuelsdorff entered on the books of the plaintiff as of April 28, 1981, the sum of \$4,343.08 without receiving the check, which showed a zero balance by virtue of the record showing the above figure. This was taken from Exhibits 1 and 2.

12. That Mr. Matthiae did not deliver the check on the 28th day of April, 1981, but did deliver it late in the afternoon of April 29, 1981, after the filing of the petition herein, and that said check was deposited in the plaintiff's bank account on April 30, 1981.

13. That on May 12, 1981, said check was returned with "stop payment" stamped thereon and a deduction made from the checking account of said plaintiff.

14. That said check was dated April 2, 1981, and had been issued by the defendant company and carried around by Mr. Matthiae until the time of filling in the amount and delivery of the check to Ms. Zuelsdorff.

15. That at the time of arriving at the figure of \$4,343.08 due the plaintiff, there was excepted from the adjustment one charge of \$399.00 claimed by the defendant and for which no purchase order accompanied said charge, and the parties agreed that it would not be acted on until proper documentation.

16. That the automatic stay became effective on April 29, 1981, at the time of the filing of the Chapter 11 proceedings.

17. That plaintiff contends that a setoff was not arrived at prior to the filing of the Chapter 11 proceedings because of the failure of the defendant to complete the agreement, which breach and failure was occasioned by stopping payment on said check.

18. That no bona fide reason under the Uniform Commercial Code or under Section 404.403(1), WIS. STATS., was shown for stopping payment on said check. That apparently the defendant stopped payment because of the filing of the Chapter 11 proceedings.

19. That following the "stop payment" order the defendant, by its owner Mr. Betka, claimed that there was due

to the defendant from the plaintiff the sum of \$2,226.63 in bills for 1979-1980 that had been previously disallowed and written off.

20. That a policy had existed for some period of time between the parties that only bills that were presented within twenty days of the date of service would be honored by the plaintiff for the reason that the auto manufacturers required plaintiff to submit all bills for warranty payments within thirty days of the date the work was performed. That most of the work performed by the defendant was warranty work.

21. That the records and books show that these items had been eliminated from the accounts of the parties long before the filing of the bankruptcy proceedings.

22. That the parties continued to do business with each other following the filing of the Chapter 11 proceedings, and before each of them went on a cash basis there were due post-bankruptcy accounts to the plaintiff in the sum of \$1,412.02 and to the defendant in the sum of \$3,762.33, a difference of \$2,350.31.

23. That the amount of \$2,350.31 due the defendant for post-bankruptcy work prior to going on a cash basis is a cost of administration.

24. That no application was made to lift the stay herein or to apply for offset rights following the filing of the Chapter 11 proceedings and the effective date of the stay.

25. That the Bankruptcy Code, and specifically Section 362, does not permit any setoff not completed prior to the filing of the Chapter 11 proceedings.

26. That there is no proper documentation for the claim of \$399.00, which determination was postponed at the time of the April, 1981, meeting, and that said amount has not been proven as an established debt of the plaintiff.

27. That the items setoff, or claim of setoff, by the defendant as to the April, 1981, transactions failed upon the "stop payment" of the check and was uncompleted prior to the filing of the Chapter 11 proceedings.

28. That all of plaintiff's accounts receivable are covered by a collateral security agreement to the Small Business Administration.

29. That under the Bankruptcy Code, and the failure to have a setoff established, there is due the plaintiff the sum of \$13,836.19, and said plaintiff is entitled to judgment therefor.

30. That the amount due the defendant in the sum of \$9,493.11 for pre-bankruptcy bills is an unsecured claim in said proceedings.

31. That there is due the defendant from the plaintiff the sum of \$2,350.31 as an expense of administration.

32. That the counterclaim alleged in the answer of the defendant is not proven.

See In Re McCormick, 5 B.R. 726 (1980); In Re Kenney's Franchise Corporation v. Central Fidelity Bank, 12 B.R. 390 (1981); and In Re Von Sistine v. Tollard, 95 Wis. 2d 678, 291 N.W. 2d 636 (Ct. App. 1980).

CONCLUSIONS OF LAW

That judgment be entered in favor of the plaintiff and against the defendant in the sum of \$13,836.19 without costs on the pre-bankruptcy indebtedness; allowing defendant the sum of \$2,350.31 as an expense of administration from the debtor in possession and \$9,493.11 as an unsecured claim; and that the claim for \$399.00 be disallowed and the counterclaim dismissed.

O R D E R

NOW, THEREFORE, IT IS ORDERED:

1. That said plaintiff is hereby granted judgment in the sum of \$13,836.19 as alleged in its cause of action,

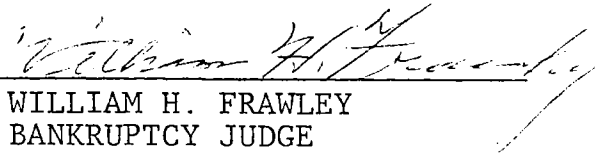
and plaintiff's attorney shall prepare the proper judgment therefor.

2. That there is due the defendant on the post-bankruptcy account the sum of \$2,350.31 as an expense of administration and \$9,493.11 as an unsecured claim.

3. That the counterclaim of the defendant is hereby dismissed upon the merits and without costs, and that the disputed account in the sum of \$399.00 is hereby disallowed.

Dated: July 6, 1982.

BY THE COURT:



WILLIAM H. FRAWLEY
BANKRUPTCY JUDGE