

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

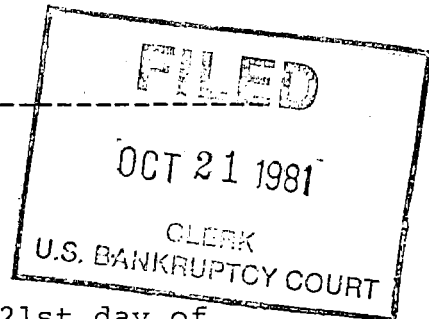
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In the Matter of

RON BROWN AMC-JEEP, INC.

No. WF11-81-00741

Debtor.

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW and ORDER



At Eau Claire, in said district, this 21st day of  
October, 1981.

Benders Joint Ventures having duly filed an application by motion for a temporary injunction prohibiting the debtor-in-possession from removing any fixtures from the property described in a certain lease dated August 17, 1972, and a further lease dated January 30, 1980, with the above named debtor corporation and to determine title to the property, being the fixtures involved, and that adequate compensation be made to the landlord, Benders Joint Ventures, in the event any of said property should be permitted to be removed from the premises; and the debtor having resisted the issuance of the temporary injunction, claiming the right to remove the said fixtures, and claiming ownership thereof, and denying that the applicant is entitled to any damages or compensation arising out of the removal of said fixtures; said matter coming on for hearing before the Court, and the Court being fully advised in the premises, and having heard the argument of counsel and having considered their respective briefs and memorandums submitted to the Court, FINDS:

1. That said leases were duly executed on said dates as above stated.
2. That by the terms of each of said leases the debtor is entitled to remove, and shall remove, and is required to

remove all hoists, overhead exhaust system, air compressor, air lines, etc. installed by the lessee, and which said leases state to be the property of the lessee. (See page 3 of lease dated August 17, 1972.)

3. That the subsequent lease dated January 30, 1980, includes the same provision as to removal of said items by the tenant and lessee.

4. That the debtor, Ron Brown AMC-Jeep, Inc., is the owner of said items.

5. That said debtor did not abandon or forfeit said fixtures by virtue of the skipped time between the two leases when it occupied the premises, paid the rent thereon, and was in full possession of said property and fixtures.

6. That the debtor is required by the terms of said leases to remove said items.

7. That the law in the State of Wisconsin on the question of fixtures is fully stated in the case of Standard Oil Company v. La Crosse Super Auto Service, Inc., 217 Wis. 237, which case provides that the tenant may remove trade or business fixtures brought onto the premises and not intended to remain thereon, provided that the removal will not constitute material injury to the premises. Wis. Stats. 704.05(4) provides in part:

"At the termination of the tenancy, the tenant may remove any fixtures installed by him if he either restores the premises to their condition prior to the installation or pays to the landlord the cost of such restoration. \* \* \* "

This section was passed in 1969 and in Wis. Stats. Annot., § 700 to 710, p. 306, it is stated:

"Sub. (4) probably states the present Wisconsin law on tenant fixtures. The policy of the law is to permit a tenant to remove fixtures in order to encourage installation of commercial fixtures and also because the contrary rule would result in a windfall to the landlord. The tenant has the right to remove such fixtures provided that he either

restores the premises to their original condition or pays the cost of restoration. \* \* \* That the right to remove such fixtures is not lost by an extension or renewal of a lease."

8. That the lease dated August 17, 1972, has the following clause as to repairs:

"The Lessee agrees and covenants to keep said property and building in as good order and repair as when delivered to it, normal wear and tear excluded; Lessee's duty being to make regular, normal and necessary repairs to the interior."

9. That the Court ordered \$2,000.00 to be deposited in the trust account of the debtor's attorney subject to the further order of the Court when the stay was lifted on October 15, 1981, at the court hearing in Wausau, Wisconsin.

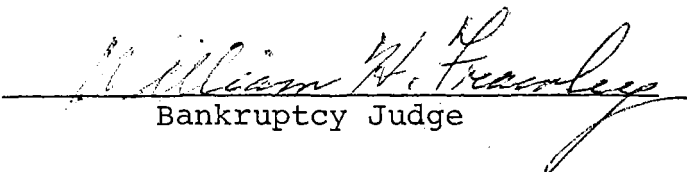
CONCLUSIONS OF LAW

That the Court enter an order continuing the lifting of the stay and permitting the removal of said items of fixtures herein described, provided that said debtor either restore the building to the condition in which it was at the time of entering the tenancy and before the installation of said items, or to pay to the applicant, Benders Joint Ventures, the cost of the restoration of the property.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That the lifting of the stay be continued permanently, and that the debtor corporation is permitted to remove said items, to-wit: all hoists, overhead exhaust system, air compressor, air lines, etc., on the condition that said debtor either restore the premises to its original condition or pay to Benders Joint Ventures the cost of said restoration.

BY THE COURT:

  
Bankruptcy Judge