

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

**Potts Logging, Inc.,

Debtor.**

**Case No. 01-11338

Chapter 11**

**Potts Logging, Inc.,

Plaintiff,**

v.

Adv. Pro. No. 01-5285

**Ford Motor Credit,

Defendant.**

**MEMORANDUM OPINION AND ORDER RE
COMPLAINT TO COMPEL TURNOVER OF PROPERTY OR
ALTERNATIVELY FOR DAMAGES**

The Court conducted a trial in this matter on January 30, 2002. FED. R. BANKR. P. 7001. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the trial and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

On April 9, 2000, Ford Motor Credit repossessed the debtor's 1999 Ford F350 with a flatbed. At the time of the repossession, the debtor's Bobcat welder/generator welding machine with attachments, including torches and tanks, (hereinafter "welder"), was bolted to the truck. The debtor testified that it took thirty minutes to attach the welder to the truck. The debtor paid

\$2,450.00 for the welder in 1998 and estimated that it would cost between \$3,100.00 and \$3,500.00 to replace the welder. The debtor paid between \$400.00 and \$500.00 for the torches and tanks. The estimated cost of replacing those attachments is \$750.00. Ford Motor Credit did not have a security interest in the welder/generator welding machine.

On April 10, 2000, Deborah Potts, spoke with representatives from the repossession company and Ford Motor Credit. According to her testimony, both representatives informed Deborah Potts that she could regain possession of the welder and attachments for a fee of \$50.00. At the trial, the representative from the repossession company did not recall speaking with Deborah Potts; however, she did recall Ford Motor Credit telling her it would be all right to remove the welder and torches as long as the removal did not cause any damage to the truck. Deborah Potts contacted the repossession company's representative to make arrangements to obtain the welder on April 14, 2000. At that time, the representative informed Deborah Potts that the truck, with the welder attached, had been sold at auction.

The debtor filed its chapter 11 petition on March 26, 2001. On September 7, 2001, the debtor filed this adversary proceeding against Ford Motor Credit.

II. CONCLUSIONS OF LAW

In the case of *Mack's Used Cars & Parts, Inc., v. Tennessee Truck & Equipment Co.*, 694 S.W.2d 323 (Tenn. Ct. App. 1985), the Tennessee Court of Appeals set forth the factors Tennessee courts have traditionally looked to in determining whether or not a chattel has become an accession of property to which it is attached. These factors are:

- (1) whether or not the party affixing the chattel intended for it to be a permanent attachment;
- (2) the relative ease/difficulty in detaching the affixed property;
- (3) whether or not the very act of detaching the affixed property would result in damage to the vehicle;
- (4) the manner and extent to which the property is affixed; and
- (5) the relationship the affixed property bears to the property to which it is affixed.

Id. at 326 (citations omitted). Whether or not a chattel has become so affixed to other property as to become an accession is a question of fact. *Id.* at 325.

In the case at bar, it is evident that the debtor did not intend to make the welder a permanent attachment to the truck. It was attached with a few bolts and with only thirty minutes of labor. The debtor testified that it would not cause serious damage to the truck to remove the welder. Additionally, the welder bears no significant relationship to the truck. The debtor used the truck in running his business and because of that, attached the welder to the truck. The welder is completely independent of the truck. In the case of *In re Lyford*, 22 B.R. 222 (Bankr. D.Me. 1982), the bankruptcy court found that certain chattels were accessions. In so deciding, the court stated "[w]hile it is true that certain components are merely bolted, not welded, to the chassis, the evidence does show that their removal would not be an insignificant task, taking two men a full day or more to do so." *Id.* at 224-225. This reasoning would seem to indicate that so long as the removal of components which have been bolted to a vehicle is relatively simple, the chattels do not become accessions. This Court agrees with that reasoning and finds that the welder is not an accession of the truck.

According to Tennessee law, "[a] conversion, . . . is the appropriation of the thing to the party's own use and benefit, by the exercise of dominion over it, in defiance of the plaintiff's right." *Mammoth Cave Production Credit Assoc. v. Oldham*, 569 S.W.2d 833, 836 (Tenn. Ct. App. 1977). To be found liable for the tort of conversion, "the defendant need only have an intent to exercise dominion and control over the property that is in fact inconsistent with the plaintiff's rights, and do so; good faith is generally immaterial." *Id.* "The ordinary measure of damages for conversion is the value of the property converted at the time and place of conversion, with interest." *Crowe v. First American Nat'l Bank*, 2001 WL 1683710, *6 (Tenn. Ct. App. 2001).

When Ford sold the F350 with the welder still attached, it is clear that it committed a conversion of the debtor's welder. The debtor testified at the trial that he paid \$2,450.00 for the welder in 1998 and between \$400.00 and \$500.00 for the torches and tanks. Given that the measure of damages is the value of the property at the time of the conversion, and not the replacement value, the Court finds that the proper measure of damages is \$2,450.00 for the welder and \$500.00 for the torches and tanks minus 20% for depreciation.

III. ORDER

It is therefore **ORDERED** that the Complaint to Compel Turnover of Property or Alternatively for Damages is **GRANTED**. It is **FURTHER ORDERED** that the debtor is awarded damages against the defendant in the amount of \$2,360.00.

IT IS SO ORDERED.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: February 28, 2002

cc:

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