UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

LEVI CORAM

Case No. 92-10915 K

Debtor

DECISION AND ORDER

The debtor, Levi Coram, asks that the Court disregard the fact that a certain 1985 Jeep Wagoneer is registered, titled, and insured in the name of his sister, Cheryl Coram, and hold that in fact the vehicle is owned by him, so that it may be treated as property of his Chapter 13 estate and brought back into his possession and retained by him as part of his Chapter 13 relief. The Court finds insufficient basis to grant such request.

BACKGROUND

It is undisputed that the registration, title and insurance for this vehicle are in the name of Cheryl Coram, the debtor's sister. However, it is only the debtor, Levi Coram, who is obligated to pay the balance of the Retail Installment Contract for the purchase of the vehicle. Legacy Motors, Inc. is the seller of the vehicle and is the creditor secured by the vehicle as to the

remaining balance. This dispute regards whether Legacy properly caused the vehicle to be registered and titled in the name of Cheryl Coram instead of Levi Coram.

Prior to the filing of this Chapter 13 Petition and possibly precipitating (in part) the filing, Legacy repossessed the vehicle. Legacy has retained the vehicle pending a resolution of the current dispute. The debtor sought by motion to compel Legacy to return the vehicle to him. Because "[p]roceedings within Rule 7001(1) include actions by trustees or debtors ... to compel the turnover of property of the estate pursuant to section 542(a)"[1] and because Legacy did not consent to the determination of this matter upon the debtor's motion, the Court denied the motion with leave to the debtor to commence an adversary proceeding pursuant to Bankruptcy Rule 7001. The debtor did so. However, Legacy Motors filed a motion under section 362(d) for relief from the automatic stay to permit it to liquidate the Jeep that was in its possession, arguing, in part, that the debtor is not the titleholder of the car and that, consequently, Mr. Coram had no right thereto. By cross-motion debtor sought a contrary determination, and it would appear that it is the motion and cross-motion that came before the Court for evidentiary hearing on June 29, 1992.

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[1] 9 Collier on Bankruptcy 15th Ed. ¶ 7001.04.

THE FACTUAL DISPUTES

It is the testimony of Mr. Erik Romer on behalf of Legacy Motors that he sold the vehicle to Mr. Levi Coram. It is undisputed that Mr. Coram signed the Retail Installment Contract and Security Agreement for the vehicle. Romer represents that Mr. Coram stated at the time of the sale that the insurance as well as the title of the car would be in his sister's name. Romer further testified that Coram came in to Legacy several times during a three week time period bringing various amounts of money until he had accumulated enough on deposit with Legacy for the downpayment. At some point in this process, according to Romer, a person purporting to be Cheryl Coram came in to Legacy with Mr. Coram and signed the MV-50 which Legacy forwarded to the Department of Motor Vehicles and which led to the issuance of title in Cheryl Coram's name. Romer admits that he did not ask for proof of identification of the woman who is alleged to have appeared at Legacy and alleged to have signed the name of Ms. Coram. It is also undisputed that the signature that appears on the MV-50 is dramatically different in appearance from that which appears on Ms. Coram's driver's license, produced by her at hearing.

Romer further offers that on January 25 and 26 of 1992, he called the insurance agency which maintained the insurance on

the vehicle to check on the insurance status, and was informed that coverage had been cancelled. (Those dates, the Court notes, were a Saturday and Sunday.) This, he testifies, led to the repossession shortly thereafter. Romer admits that Legacy had received no notification regarding an impending insurance cancellation and that a loss payee noted as such on an insurance policy would receive a written notification prior to any cancellation. It is unclear whether Legacy had knowledge of its being so noted on the insurance policy in question.

Romer further admits that he had no written authorization and has no written notes or memoranda of his own regarding the alleged instruction from Mr. Coram to title the vehicle in his sister's name.

In an offer of proof that apparently occurred off the record (it is not in the Transcript), Legacy asserted that the actual title certificate for the vehicle was found in the vehicle when it was repossessed. Testimony to this effect was, in fact, never elicited. Thus the suggestion that Legacy came into possession of the title certificate in such a manner may be viewed only as hypothetical; this is significant for reasons that will become apparent later.

Mr. Coram flatly denies any and every aspect of the Legacy account except his having told them that the insurance would be in his sister's name. He denies ever instructing anyone at Legacy Motors to title the vehicle in anyone's name but his own.

He first admitted, but then quickly denied that he was present at Legacy when the certificate of sale was prepared, and he denied ever being at Legacy Motors with his sister with regard to the purchase or titling of this vehicle. He denies ever appearing at Legacy Motors with any female individual to sign the documentation regarding the titling of the vehicle. He denies that a Certificate of Title for the vehicle was ever received at 115 Nevada Street, where he resides with his sister. He denies any lapse in insurance and provides an exhibit by which his insurance agency represents that liability insurance, at least, was indeed in effect at least from November 26, 1991 to March 20, 1992. He denies being in default in any way, shape or form that would have provoked or empowered Legacy to repossess the vehicle as it did in January.

His sister, Cheryl Coram, also took the stand. Her testimony is of limited probative value. She makes it clear that she never appeared at Legacy Motors in regards to this transaction and never signed the MV-50. But beyond that, her testimony appears confused and to have been led largely by the debtor's counsel. For example, counsel asked "Were you ever at Legacy Motors between the period of October, October of 1991, through January or February of 1992?" She responded "Yes, I was there, went with family." Counsel then stated "Between the period of October, October of 1991 at the time this vehicle was first purchased through February or March?" To which she then responded "No, I don't think around that time." Counsel then asked "Is there a time that other family or

other friends had purchased a vehicle from Legacy Motors?" And Ms. Coram responded "Levi." (This is a reference to the debtor.) Consequently there was some question as to precisely what her response was to that question.

Counsel for Legacy revisited this matter on cross examination. He stated "Your testimony is you never have been to Legacy Motors, is that correct?" She answered "No. I have been to Legacy." He asked "When was that?" She replied, "It wasn't during the time that he just spoke the date and times. I wasn't there during that." He then asked "When were you at Legacy Motors to the best of your recollection?" She answered "Its been a while ago, I'd say maybe July, maybe May or something last year, a couple years ago, something like that." (The subject vehicle was purchased in October of 1991.)

Consequently it is still not clear to the Court whether Ms. Coram was at Legacy Motors with anyone other than the debtor and whether that was a few months before the purchase of the 1985 Jeep or more than a year before that purchase.

Ms. Coram also did not appear to have a clear knowledge of what purpose she actually served for her brother in the purchase of this vehicle. The Court had excluded her and Mr. Romer from the courtroom while Mr. Coram testified, and she consequently did not hear Mr. Coram testify that only the insurance was to be in his sister's name. When Ms. Coram later took the stand on direct examination the following exchange occurred:

Mr. Danzinger: Ms. Coram, you are the registered owner of a 1985 Jeep Wagoneer, is that correct?

Answer by Ms. Coram: Right.

Q: Okay, is that a car that you used or drove?

A: Yes.

Q: Okay, and was it purchased for you?

A: Yes.

Q: The car was purchased for you?

A: Yes.

Counsel then went on to another matter. But on cross-examination the following exchange occurred:

Question by Mr. Gembarosky: Okay. And your indication was that this car was bought for you by Mr. Coram, your brother, Levi Coram?

A: No, I did not say that.

Q: Okay. But the insurance of this vehicle was in your name?

A: The insurance was, right.

Q: Was the car registered in your name?

A: No.

Q. Just the insurance?

A: Just the insurance.

Thus, on direct examination Ms. Coram agreed that the vehicle was registered in her name. On cross-examination she denied this established fact. On direct examination she agreed that the vehicle had been bought for her by Levi Coram; on cross-

examination she denied having made that statement.

When asked on cross-examination whether she received the Title Certificate for the 1985 Jeep in the mail she answered "No, because anything I would have received in the mail, I would have signed and had it taken to my lawyer, but I did not receive all that, no." This caused counsel for Legacy to repeat the question, "You didn't receive a Certificate of Title, that's your answer?" and she responded "Right."

Apparently for good measure, Legacy's counsel again asked "To the best of your recollection, the car was never registered in your name?" and she responded "No. Not to my knowledge. That's not my signature on this paper and all that."

Having observed the demeanor of this witness and listened to her testimony, the Court is of the firm conviction that whether or not she understood the disputes at issue in this case, she testified in whatever manner she sensed might aid her brother's cause, flatly denying on cross that which she readily admitted on direct, and testifying in absolute terms (e.g., "I did not receive [the Title Certificate]") as to matters that she could at best only deduce from other facts not in evidence (e.g., "Anything I would have received in the mail, I would have signed and had it taken to my lawyer.")

Consequently, I do not credit Ms. Coram's testimony on any issue other than that she did not sign the MV-50.

ANALYSIS

In order for the Court to believe Mr. Coram's account of the matters before it, the Court would have to believe the following:

1. Whether Legacy Motors pulled the name of Cheryl Coram out of the air or misunderstood some reference by Levi Coram regarding his sister, it nonetheless committed the felony of causing her signature to be forged on the MV-50, and of submitting that to the Department of Motor Vehicles in order to cause the vehicle to be titled in her name.

2. Despite the clear mandate of Vehicle and Traffic Law § 2109, which requires the Commissioner of Motor Vehicles to mail a Title Certificate to the owner, and despite the fact that the owner on this Title Certificate was shown to be Cheryl Coram at 115 Nevada Street in Buffalo, the Commissioner violated this statutory duty thereby denying Mr. Coram and Ms. Coram the opportunity to observe that Legacy had caused the vehicle to be improperly titled at a time when they could have rectified that error.

3. The repossession of the vehicle by Legacy in late January, 1992 was without any provocation whatsoever, for it is Mr. Coram's own testimony that he was not late on any payments and there was no lapse in insurance coverage.

Let us take the second of these propositions first, since

it is the only one of the three that implicates someone other than Legacy in the picture that Mr. Coram seeks to paint.

Mr. and Ms. Coram testify that the Title Certificate never appeared at their residence. Yet Legacy Motors had possession of it and produced it at hearing. Coram's attorney stated on the record that he must "assume" that Legacy Motors had possession of the Certificate all along. The offer of proof by Legacy (described above) that never became evidence offers a hypothetical alternative; that indeed the Certificate was received by someone at the Nevada Street address, was placed in the vehicle and was found there by Legacy when it repossessed the vehicle. (This remains merely hypothesis, there being no evidence to this effect.) For it to be true that the Certificate never was mailed to 115 Nevada Street and was instead mailed to Legacy Motors would require that the Commissioner of Motor Vehicles violate her duty under New York Vehicle and Traffic Law § 2109, which requires her to mail it to the owner.

In New York Law "there is a very strong presumption ... that public officers have properly discharged the duties of their office."[2] This presumption "can be overcome only by convincing evidence."[3]

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[2]57 N.Y.Jur.2d, Evidence and Witnesses § 119.

[3]Id. § 120.

I do not find Cheryl Coram's or Levi Coram's testimony on this point, as described above, either individually or collectively convincing. I find that they have failed to rebut the presumption that the Title Certificate was mailed to Cheryl Coram at 115 Nevada Street and was received by someone there. I will make no finding as to how the Certificate thereafter came into the possession of Legacy Motors. However, I note that the Title Certificate was issued on the 12th of January, 1992, and that even if it was received promptly thereafter at 115 Nevada Street, there would not have been a great deal of time between its receipt and the repossession of the vehicle, in which Levi Coram and Cheryl Coram could have sought to amend the ownership records. Thus, while I do not conclude that the debtor had such notice as would estop him from claiming ownership of the vehicle, I expressly find that there is no convincing evidence that Legacy somehow caused the alleged wrongful titling of the vehicle to be concealed from the debtor by causing the Certificate to be diverted from 115 Nevada Street.

As to Legacy's alleged forgery of Cheryl Coram's name on the MV-50, I find that the fact that this issue has come before the Court on Legacy's motion and debtor's cross-motion does not obviate the need for the debtor to carry the burden of proof that is required in an adversary proceeding to compel turnover of property

under 11 U.S.C. § 542(a).[4] The Court additionally rules that in endeavoring to carry this burden of proof, the debtor ought not to be encumbered by § 2108 of the Vehicle and Traffic Law of the State of New York, which establishes a Certificate of Title as prima facie evidence of the facts contained thereon; since this is a dispute between the debtor and Legacy Motors (no one has been alleged to have relied detrimentally on Cheryl Coram's record ownership as shown on the Title Certificate) and since the debtor alleges that Legacy Motors wrongfully caused the Certificate to reflect Cheryl Coram as owner, the debtor ought not to have Legacy's alleged wrongful conduct elevated to a position of prima facie validity.[5]

It is the Court's determination that Mr. Coram has failed to prove, by a preponderance of the evidence, that the vehicle rightfully belongs to him. The Court so holds because Mr. Coram has brought forth no evidence whatsoever to support his bare denial

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[4]See *In re Express America, Inc.*, 130 B.R. 196 (Bankr. W.D. Pa. 1991) and consider *Maggio v. Zeitz*, 333 U.S. 56, 68 S.Ct. 401, 92 L.Ed. 476 (1948).

[5]The Court notes that State cases frequently find that the prima facie evidence of a Title Certificate is fully rebutted by other evidence even in cases where third party rights are affected by such decision. See, for example, *Sosnowski v. Kolovas*, 127 A.D.2d 756, 512 NYS2d 148 (1987), in which the title owner, sued for wrongful death arising out of an accident in which her cousin was operating the vehicle, was held to be entitled to a jury trial on the issue of whether she had in fact conveyed the vehicle to her cousin before the accident.

of having instructed Legacy to title the vehicle in the name of Cheryl Coram and his bare denial of ever having brought a female to Legacy Motors to sign Cheryl Coram's name. The Court declines Mr. Coram's request that it leap to the conclusion that despite the fact that Legacy Motors was willing to rely exclusively on the credit of Levi Coram, and did not insist upon the signature of Cheryl Coram on the Retail Installment Contract, Legacy found some reason or benefit for itself sufficient to cause it to unilaterally decide to title the vehicle in her name and to forge her signature upon the MV-50. The debtor has not offered even a hypothesis or motive regarding Legacy's alleged conduct, that might tempt the Court to draw such a conclusion.

Rather, the debtor chooses to intertwine this issue with the question of whether there was a basis for the repossession in late January. Legacy offered an exhibit purporting to be a written promise of Levi Coram to pay the sum of $237.07 by January 25, 1992 in order to keep his insurance one month in advance or else suffer immediate repossession, and further promising to bring to Legacy proof that his insurance would not lapse by showing to Legacy that he had had the required photo inspection completed by January 7, 1992. The document was purportedly dated January 3, 1992. It was offered by Legacy to explain why Erik Romer purportedly contacted the debtor's insurance agency on January 25, whereupon he was allegedly told that the insurance had lapsed. The debtor challenges this document alleging that it too was forged and

pointing out that the name on the signature line appears to be "Coram Levi" rather than his name, Levi Coram. The debtor would thus have the Court believe that Legacy not only forged Cheryl Coram's name on the MV-50 in late 1991, but also forged his name in January, 1992 in order to provide itself a basis for the repossession of the vehicle several weeks later.

The testimony of the debtor is entitled to no greater weight than the testimony of Romer. The several hypotheses which the debtor seeks to establish are no more plausible than those offered by Legacy, and neither side has proven its version.

In light of the fact that it is for the debtor to prove that the property sought to be recovered is property of the estate,[6] his claim must fail.

The question, therefore, of whether Legacy Motors was justified in its repossession of the vehicle need not be addressed by this Court. Legacy's motion to lift stay so that it may sell the vehicle is granted, subject, however, to the right of Cheryl Coram to redeem the vehicle in accordance with New York State Law or to take action against Legacy in State Court. If Cheryl Coram wishes to convey the vehicle to Levi Coram, she is free to do so, but that will not give rise to the reimposition of the automatic stay.

Finally, today's holding will not bind any Court of the

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[6]See cases cited *supra* note 4.

State of New York if Mr. Coram or Ms. Coram should take action against Legacy in State Court. The current resolution of the issues does not preclude their relitigation in State Court for other purposes. This Court's determination has been solely based on the question of whether there exists on behalf of Levi Coram an interest pursuant to 11 U.S.C. § 541 and whether any such interest gives rise to authority for him to use, sell, or lease the vehicle, such that turnover under 11 U.S.C. § 542 may be compelled. Today's determination is that while Levi Coram may have had some interest in the vehicle (such that it was prudent for Legacy Motors to seek lift of stay before selling the vehicle), Levi Coram has not proven such an interest as would permit the Court to direct turnover under section 542.

The stay is lifted. The adversary proceeding by the debtor against Legacy is moot and is hereby dismissed.

SO ORDERED.

Dated: Buffalo, New York
July 28, 1992

U.S.B.J.