

FEB 6 1995

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

BY: BARON GROSHON  
Deputy Clerk

IN RE: ) Case No. A-B-94-10440  
Richard Kirk Swayngim and ) Chapter 13  
Ingrid G. Swayngim )  
 ) Order for Sanctions  
 )  
 ) JUDGEMENT ENTERED ON FEB 6 1995  
Debtor(s) )

This cause coming on for hearing and being heard on January 24, 1995, before the Honorable George R. Hodges on the Debtors' Motion for Sanctions and return of a motor vehicle, It is Found as Facts as follows:

1. That Richard Kirk Swayngim and Ingrid G. Swayngim filed a Chapter 13 Petition and Schedules, September 26, 1994 and listed thereon, United Auto Sales, 716 Smoky Park Highway, Candler, NC 28715 as a secured creditor, having a lien on a certain 1986 Oldsmobile motor vehicle.

2. That on September 27, 1994, a repossession agent by the name of Tommy Chambers, appeared at the Swayngim home to repossess such vehicle. That both the Swayngims advised Mr. Chambers they had filed a Chapter 13 Bankruptcy and that he should advise United Auto Sales of the filing. Mr. Swayngim also called the office of his Attorney, T. Bentley Leonard, and spoke with Mary Jane Foures, who advised Mr. Chambers of the filing and that he should not repossess the vehicle. Mary Jane Foures then called the Clerk of the U. S. Bankruptcy and obtained the case number. Mr. Chambers contacted his office, but was told to repossess anyway. Mr. Swayngim talked to Ms Foures again, who then gave Mr. Chambers the file number and date of filing and again told Mr. Chambers he should not pick up the vehicle because of the bankruptcy filing.

3. That about the same time, Mrs. Swayngim called United Auto Sales and talked with Vicky Hollifield and advised her that they had filed a Chapter 13 Petition in Bankruptcy Court and that repossession was improper. Mrs. Hollifield inquired as to the name of the attorney and asked how much he was being paid and stated that he certainly must be stupid.

4. That about the same time, Mary Jane Foures contacted Vicky Hollifield at United Auto Sales and advised that the Swayngims had filed a Chapter 13 proceeding and advised her of the file number. Mrs. Hollifield said there was no one present who could do anything.

5. That Mr. Chambers proceeded to repossess the motor vehicle on behalf of United Auto Sales.

6. That the sales arrangement by United Auto Sales was phrased as a Lease Agreement from Security Fund Leasing.

7. That Security Fund Leasing is a corporation and United Auto Sales is a partnership, owned and operated by Iris M. Davis and Larry R. Davis, aka Dick Davis.

8. That the payments made by Swayngims for said 1986 automobile were sometimes made to United Auto Sales and sometimes payable to United Auto Sales/SFL.

9. That Iris Davis testified in open Court that United Auto Sales was a corporation when in fact, same is not registered in the State of North Carolina in connection with her or her husband, but only an unrelated company in eastern North Carolina.

10. That United Auto Sales and Security Fund Leasing are operated as the alter egos of Iris M. Davis and her husband Larry R. Davis, aka Dick Davis.

11. That after repossession, on September 27, 1994, the Swayngims' Attorney, T. Bentley Leonard, wrote a letter to United Auto Sales advising them of the bankruptcy, the file number and requested return of the 1986 Oldsmobile automobile. Later, on September 29, 1994, said attorney wrote United Auto Sales again requesting return of the vehicle and advising of the bankruptcy. Served therewith was a Motion for Sanctions and a Notice of Hearing and contained in the letter was an offer to withdraw the Motion for Sanctions upon immediate return of the vehicle.

12. That the vehicle was not then voluntarily returned to the Debtors.

13. That a hearing was held before the United States Bankruptcy Judge George R. Hodges on October 25, 1994, who ordered immediate return of said 1986 Oldsmobile to the debtors with further orders pending. Further, the Court ordered that the hearing be continued until November 15, 1994, and subsequently continued by consent of the parties until January 24, 1995. Iris M. Davis and Larry R. Davis, aka Dick Davis, Security Fund Leasing, Inc. and United Auto Sales were represented at the October 25, 1994 hearing by Steven A. Jackson, Attorney and at the hearing on January 24, 1995, by Eugene Ellison, Attorney.

14. That the Order for Turnover entered in this case also required the Swayngims to maintain full liability and collision coverage on the subject 1986 Oldsmobile.

15. That at 5:46 pm on Friday, January 13, 1995, Iris Davis faxed to T. Bentley Leonard, Attorney, at his office and on letterhead of Security Fund Leasing advising that insurance coverage had been cancelled on said 1986 Oldsmobile and that she was holding Mr. Leonard, his law firm and the Swayngims personally responsible for any damages. The fax contained the

handwritten time of 2:55 pm on the same date.

16. That at approximately 9:00 pm on Friday, January 13, 1995, the Swayngim's 1986 Oldsmobile motor vehicle was repossessed by the agent of Security Fund Leasing, United Auto Sales, Larry R. Davis, aka Dick Davis, and Iris M. Davis.

17. During December, 1994, Iris Davis received notice of collision and comprehensive insurance cancellation but not liability and waited to repossess the motor vehicle until no response could be timely made by the Debtors or their attorney.

18. That soon after the hearing on October 25, 1994, the 1986 Oldsmobile was in need of repairs and the Swayngims decided to park same and it was not thereafter driven prior to the second repossession.

19. That Mrs. Iris Davis testified in the January hearing that she was afraid of liability with no insurance although liability was never cancelled. She also stated that she did not believe the Swayngims or Mary Jane Foures when advised of the Bankruptcy filing because other customers had falsely advised her of a Chapter filing. Also that she, her husband, United Auto Sales and Security Fund Leasing repossessed said motor vehicle on January 13, 1995, without requesting permission or relief from stay despite actual knowledge of the Bankruptcy filing.

20. That the Swayngims were without their only automobile for several days after the first repossession and had to obtain alternate transportation plus missed time from work for court hearings and had to hire a baby-sitter. The Swayngims incurred approximately Ninety Dollars (\$90.00) in actual damages as a result thereof plus other annoyance, inconvenience and aggravation.

21. That the Court finds the testimony of Mary Jane Foures, Richard Swayngim and Ingrid Swayngim believable and that there was a duty on the part of the creditor to investigate the existence of the bankruptcy in September, 1994, when first advised of the filing.

22. That the Court finds that the testimony of Iris M. Davis to be outlandish, unbelievable, incredible, bodacious and inconsistent with the facts.

23. That Iris M. Davis, United Auto Sales, Security Fund Leasing and Larry R. Davis aka Dick Davis repossessed twice without Order of the Court and did nothing to mitigate the damages and that such repossessions were without authority.

24. That Iris M. Davis, United Auto Sales, Security Fund Leasing and Larry R. Davis aka Dick Davis required Mr. Swayngim to sign a statement when he originally obtained the 1986 Oldsmobile that he would not include the debt if he filed

bankruptcy. Such statement is in violation of Mr. Swayngim's constitutional rights.

25. That T. Bentley Leonard, Attorney, to the date of the hearing expended approximately six (6) hours in this matter at his customary reasonable rate of \$150.00 per hour.

26. That Iris M. Davis and Larry R. Davis aka Dick Davis sometimes do business as Dick Davis Enterprises, Inc.

UPON THE FOREGOING Findings of Facts It Is Concluded as a Matter of Law as Follows:

1. That Iris M. Davis, United Auto Sales, Security Fund Leasing and Larry R. Davis aka Dick Davis, aka Dick Davis Enterprises, Inc., flagrantly twice violated the Sec. 362 Automatic Stay in total disregard and contempt for this Court despite actual knowledge of the bankruptcy filing and repossessed twice without permission of the Court.

2. That the Debtors are entitled to actual damages, attorney's fees and punitive damages and return of their 1986 Oldsmobile.

3. That the Creditors' action showed contempt for the Court, the Bankruptcy Code and the U. S. Constitution. Requiring a waiver of bankruptcy rights is another indication of flaunting the Bankruptcy Code and Orders of the Court in a self-centered approach.

4. The creditor had notice of the Chapter 13 filing through its agents. The fact that other customers had hoodwinked the creditor by claiming to have filed bankruptcy was irrelevant. The Court found that the initial notice received by the creditor through its agent was sufficient; later written notice was received and ignored. The Court is available 24 hours a day by telephone or by Voice Case Information Service for verification of bankruptcy filing.

5. The reason that Iris Davis gave for the second repossession was not believable and was inconsistent with all reason.

6. Giving the Debtors' attorney six minutes to respond to a fax is an example of the contemptuous behavior of the creditor.

UPON THE FOREGOING Findings of Facts and conclusions of Law IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That Iris M. Davis, United Auto Sales, Security Fund Leasing and Larry R. Davis aka Dick Davis aka Dick Davis Enterprises, Inc., immediately return the said 1986 Oldsmobile vehicle to the Debtors herein along with the title thereto with no liens showing on such title and immediately cancel the lease

formerly held on such vehicle.

2. That Iris M. Davis, United Auto Sales, Security Fund Leasing and Larry R. Davis aka Dick Davis aka Dick Davis Enterprises, Inc., pay forthwith the sum of Nine Hundred dollars (\$900.00) to T. Bentley Leonard as attorney's fees in this matter.

3. That Iris M. Davis, United Auto Sales, Security Fund Leasing and Larry R. Davis aka Dick Davis aka Dick Davis Enterprises, Inc., shall forthwith pay to the Chapter 13 Trustee the sum of Ten Thousand dollars (\$10,000.00) as punitive damages which the Chapter 13 Trustee shall disburse in the Debtors' Chapter 13 as provided by the Plan and Statute.

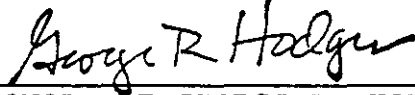
4. That Iris M. Davis, United Auto Sales, Security Fund Leasing and Larry R. Davis aka Dick Davis aka Dick Davis Enterprises, Inc., shall forthwith pay to the Debtors the sum of Two Thousand dollars (\$2,000.00) for their actual damages.

5. That the Swayngim's debt to Iris M. Davis, United Auto Sales, Security Fund Leasing and Larry R. Davis aka Dick Davis aka Dick Davis Enterprises, Inc., is hereby cancelled as further punitive damages.

6. That this Order is a final Order and, in addition to the other remedies provided by law or equity, may be recorded in the Office of the Clerk of Superior Court for Buncombe County, North Carolina or other counties for enforcement pursuant to State law.

7. That for matters and liabilities contained herein Iris M. Davis, United Auto Sales, Security Fund Leasing and Larry R. Davis aka Dick Davis aka Dick Davis Enterprises, Inc., are jointly and severally liable for the specific performance of each and every part of this Order

This the 6<sup>th</sup> day of Feb, 1995.

  
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HONORABLE GEORGE R. HODGES  
U. S. BANKRUPTCY JUDGE  
FOR THE WESTERN DISTRICT OF  
NORTH CAROLINA