

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

In re:	)	
	)	Case No. 09-10838
PREBUL JEEP, INC.	)	
d/b/a Prebul Auto Group, Prebul Kia, Prebul	)	Chapter 7
Jeep, Prebul Chrysler and Prebul Dodge;	)	Jointly Administered
PREBUL MOTORS OF DALTON, LLC	)	
d/b/a Prebul Pontiac, Prebul Cadillac,	)	
Prebul GMC Truck and Prebul Buick;	)	
PREBUL AUTOMOTIVE OF DALTON, LLC	)	
d/b/a Prebul Mazda;	)	
PREBUL IMPORTS OF DALTON, LLC	)	
d/b/a Prebul Kia of Dalton;	)	
PREBUL MOTORCARS, LLC	)	
d/b/a Prebul Volvo of Chattanooga, f/d/b/a Prebul	)	
Used Cars;	)	
PREBUL INFINITI OF CHATTANOOGA, LLC	)	
	)	
Debtors.	)	

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JERROLD D. FARINASH, TRUSTEE	)
	)
Plaintiff,	)
	)
v.	)
	)
CHRYSLER, LLC	)
	)
Defendant.	)

**MOTION FOR ORDER OF CONTEMPT**

A hearing will be held on July 16, 2009, at 10:30 a.m. in Bankruptcy Courtroom A, Third Floor, Historic United States Courthouse, 31 East 11th Street, Chattanooga, Tennessee on this Motion.

**If you do not want the court to grant the relief requested, you or your attorney must attend this hearing. If you do not attend the hearing, the court may decide that you do not oppose the relief sought if the above matter and may enter an order granting that relief.**

Comes the Trustee, Jerrold D. Farinash, for the Debtor, Prebul Jeep, Inc., and respectfully moves the Court pursuant to U.S.C. § 105 and Rules 9014 and 9020 of the F.R.B.P. to find that the Respondent is in willful contempt of the provisions of 11 U.S.C. § 362 and 363. The Trustee would respectfully show the following:

1. Prebul Jeep, Inc., voluntarily initiated this proceeding on February 11, 2009, pursuant to Chapter 7 of Title 11 U.S.C. This Court has jurisdiction of this matter pursuant to 11 U.S.C. § 105 and 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. § 1409. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A)(O). Jerrold D. Farinash is the duly appointed and acting Chapter 7 Trustee of the Estate of Prebul Jeep, Inc.

2. Prebul Jeep, Inc., is a party to a dealership agreement with Chrysler, LLC (dealer code #23815) covering the Jeep, Chrysler, Dodge and Dodge Truck lines based in Chattanooga, Tennessee.

3. By a series of Orders entered by this Court the Trustee for Prebul Jeep, Inc., has continued the operation of the Prebul Jeep, Inc., dealership.

4. By Order entered in this Court on May 5, 2009, the Prebul Jeep, Inc., Trustee was authorized to sell the “blue sky” rights of Prebul Jeep, Inc., under the statutory laws of the State of Tennessee subject to the purchasers’ approval by Chrysler as a dealer.

5. On April 30, 2009, Chrysler, LLC, commenced its reorganization case by voluntarily petition for relief under Chapter 11 of Title 11 U.S.C.

6. On or about May 14, 2009, Chrysler, LLC, filed its Omnibus Motion of Debtors and Debtors In Possession for an Order, pursuant to Sections 105, 365 and 525 of the Bankruptcy Code and Bankruptcy Rule 6006, (A) Authorizing the Rejection of Executory Contacts and Unexpired

Leases with Certain Domestic Dealers and (B) Granting Certain Related Relief. A copy of this Motion is attached hereto as Exhibit A.

7. Through said Motion Chrysler, LLC, seeks permission to reject approximately 800 dealership agreements, one of which is the dealership agreement with Prebul Jeep, Inc. The Motion, however, seeks extensive additional rulings by the Court in the Southern District of New York under the rubric of “granting certain related relief”. These additional requests for relief are the subject matter in focus of this Motion.

8. Jerrold D. Farinash, Trustee, on behalf of the Estate of Prebul Jeep, Inc., holds certain rights under the provisions of the Motor Vehicle Sales Licensing laws of the State of Tennessee T.C.A. § 55-17-101 *et. seq.* These rights are non-contractual, non-monetary, statutory rights created by the State of Tennessee to regulate the licensing of automobile dealers in the State of Tennessee. The Trustee has sold these rights as they relate to the Chrysler, LLC, dealership agreement pursuant to the Court’s order of May 5, 2009.

9. Although there appears to be some very minimal authority without citation to a specific exemption to support the proposition that a debtor need not seek the termination of the automatic stay in order to reject a contract with another debtor, See In re: Sun City Investments, Inc., 89 B.R. 245, 249 (Bankr. M.D. FL 1988), the Motion of Chrysler, LLC, goes far beyond the mere rejection of an executory contract. Under the auspices of “granting certain related relief”, Chrysler, LLC, seeks to terminate the non-contractual, non-monetary, statutory rights provided by the State of Tennessee to Prebul Jeep, Inc. Furthermore, the Motion of Chrysler, LLC, seeks an advisory ruling from the Court in the Southern District of New York regarding the effect of the rejection as a “termination” of the dealership relationship further limiting certain rights of Prebul Jeep, Inc. The expansive relief requested in the Chrysler, LLC, Motion goes well beyond the mere seeking of

permission under 11 U.S.C. § 365 for the ability to reject a contract. The Chrysler, LLC, Motion presents extensive litigation regarding the rights of the parties as it relates to a rejected contract and, more importantly, seeks to terminate certain non-contractual, non-monetary, statutory rights of Prebul Jeep, Inc., which goes way beyond the scope of the rejection provisions of 11 U.S.C. § 365.

10. To illustrate these points, the Courts attention is drawn to the statement of “relief requested” in the Motion (paragraph 22, page 9) wherein, in addition to the authorization to reject the dealership contracts the Chrysler, LLC, seeks

(b) determining that any state and local statutes, rules and regulations of any kind or nature whatsoever, including without limitation the Dealer Statutes (as defined below) (collectively “Dealer Laws”), are preempted by the Bankruptcy Code to the extent that they purport to, or could be interpreted or applied to, interfere with, undermine or impact the full and complete rejection of the Rejected Dealer Agreements;

This request for relief reflects litigation goes well beyond the scope of the mere authorization to prove the rejection of executory contracts. The Motion seeks addition relief as follows:

(c) determining that a New Chrysler and all Remaining Dealers are “person[s] with whom [the Debtors have] been associated” within the meaning of section 525 of the Bankruptcy Code and therefore are entitled to the protections of § 525 of the Bankruptcy Code;

This request reflects litigation that goes well beyond the mere rejection of an executory contract.

The Motion goes on to seek further relief as follows:

(d) clarifying the scope of the Affected Dealers’ claims, status, and rights arising under or in any way related to the Dealer Laws and the Debtors’ rejection of the Rejected Dealership Agreements (collectively “Rejection Damage Claims”); and

This request for relief goes well beyond the mere seeking authorization to reject the executory contract.

11. It is obvious that Chrysler, LLC, is seeking to exempt itself from the Fair Trade Practices laws of each state as they relate to dealership franchises. This is contrary to the scope of the Bankruptcy Code and the preemption doctrine argued by Chrysler, LLC. The rejection of a contract does not exempt the Debtor from the restriction of usury when it enters into new contracts even if such an exemption would enhance the economic value of the new reorganization contracts. The rejection of a lease by a Debtor does not remove that Debtor from the operations of the non-monetary and non-contractual landlord/tenant acts enacted by state laws. The attempt by Chrysler, LLC, to terminate, restrict, and litigate the non-contractual, non-monetary and statutory rights of Prebul Jeep, Inc., cannot be justified as a mere exercise of its rights under 11 U.S.C. § 365 to obtain authorization to reject an executory contract.

12. Chrysler, LLC, had full and complete knowledge that Prebul Jeep, Inc., is in a currently pending Chapter 7 proceeding.

13. At no time did Chrysler, LLC seek relief from the Automatic Stay of 11 U.S.C. § 362 in the proceeding of Prebul Jeep, Inc., pending in this Court.

14. The filing of the Motion by Chrysler, LLC, as it attempts to restrict and litigate the rights of Prebul Jeep, Inc., under the non-contractual, non-monetary, and statutory rights of the State of Tennessee, is a violation of the automatic stay, particularly 11 U.S.C. § 362 (a)(3) as an attempt to exercise possession and/or control over property of the Estate. The filing of the Motion by Chrysler, LLC, has had a chilling effect on the sale already approved by this Court as it relates to the non-contractual, non-monetary, and statutory rights of Prebul Jeep, Inc. There is nothing in the provisions of 11 U.S.C. § 365 which hint at a conclusion that Chrysler, LLC, may simply rewrite the statutory laws to provide benefits to Chrysler, LLC, or its successor over and above the simple ability to reject the burdensome contract. There is nothing in 11 U.S.C. § 365 that gives Chrysler

the authority or the power to reject local statutory laws which it believes are inconsistent with its financial reorganization goals. The regulatory laws of the State of Tennessee are not “executory contracts” under 11 U.S.C. § 365. Therefore, the attempts by Chrysler, LLC, to terminate, limit, and litigate the rights of Prebul Jeep, Inc., under the non-contractual, non-monetary and statutory rights of Prebul Jeep, Inc., go beyond the scope of 11 U.S.C. § 365. The Trustee of Prebul Jeep, Inc., Estate timely filed an objection to the Motion filed by Chrysler, LLC, November 26, 2009, wherein he raised the objection to Chrysler, LLC, proceeding with this Motion based upon a violation of the automatic stay of 11 U.S.C. §362. Thus far, Chrysler, LLC, has chosen not to remove the dealership agreement with Prebul Jeep, Inc., from the scope of the Motion.

WHEREFORE, Jerrold D. Farinash, Trustee of the Estate of Prebul Jeep, Inc., moves the Court for an order adjudicating Chrysler, LLC, in contempt of this court for having violated and disregarded the terms of 11 U.S.C. § 362 and that the Motion filed by Chrysler, LLC, be deemed invalid and voided with respect to the Dealership Agreement with Prebul Jeep, Inc.

RESPECTFULLY SUBMITTED:

BY: /s/ Jerrold D. Farinash  
JERROLD D. FARINASH (10220)  
RICHARD T. KLINGLER (6594)  
Kennedy, Koontz & Farinash  
320 North Holtzclaw Avenue  
Chattanooga, Tennessee 37404  
(423) 622-4535  
*Counsel for the Trustee*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing document and accompanying order has been sent by electronic mail to those shown on the Notice of Electronic Filing receipt issued by the Clerk of Court and/or by placing a copy of the same in the United States First Class Mail with sufficient postage to insure delivery to its destination on the following:

Chrysler  
Registered Agent  
CT Corporation System  
800 S. Gay Street, Ste. 2021  
Knoxville, TN 37929

Jones Day  
Corinne Ball  
222 East 41<sup>st</sup> Street  
New York, NY 10017

Jones Day  
Jeffrey Ellman  
1420 Peachtree Street, NE.,  
Suite 800  
Atlanta, GA 30309

Dated: June 9, 2009

/s/ Jerrold D. Farinash  
Jerrold D. Farinash