

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
INTAGLIO DESIGNS, LTD.,)
Debtor.) Bankruptcy Case No. 97-30482
_____)
INTAGLIO DESIGNS, LTD.,)
Plaintiff,)
vs.) Adversary Case No. 98-3065
RAYMOND DEREUME GLASS, INC.,)
Defendant.)

OPINION

This matter having come before the Court on an Adversary Complaint for Turnover of Property filed by the Plaintiff/Debtor, Intaglio Designs, Ltd.; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The Court will first address the Motion in Limine Under Federal Rule of Evidence 701, 702 & 703 filed by the Defendant seeking to exclude the evidence deposition of John Triggs as an expert witness regarding the valuation of certain glass-making equipment which is the subject of Plaintiff's Adversary Complaint. Having denied the Motion in Limine on the record at trial, the Court finds it appropriate to reiterate its findings as a part of this Opinion and Order on Plaintiff's Adversary Complaint. The Court finds that the Plaintiff failed to qualify John Triggs as an expert witness because it was uncontroverted that John Triggs had never seen the equipment in question, and he had never owned any equipment of this type, sold any such equipment as a broker, nor sold any similar type of equipment other than as part of a fire sale purchase in an odd lot at an auction. Additionally, the Court notes that the

witness testified that he had not even seen such a piece of equipment sell at an arms length or in an auction transaction for a period of at least 10 years. Finally, the Court would note that it is undisputed that John Triggs is not trained as an expert appraiser of glass-making equipment. Even though he has extensive on-the-job training as a manufacturer of glass, the Plaintiff failed to show that he has any recognizable skill at valuing equipment or in the appraisal of glass-making equipment. Due to the fact that John Triggs did not actually examine the glass-making equipment which is the subject matter of this litigation, it has been held in the Seventh Circuit Court that an expert or an individual cannot base their testimony upon hearsay statements concerning the condition of the equipment. See: Gong v. Hirsch, 913 F.2d 1269, at 1272 and 1273, (7th Cir. 1990).

In turning to Plaintiff's Adversary Complaint, the Court notes that the only factual dispute in this matter surrounded the valuation of the glass manufacturing equipment at issue. In an Order dated July 13, 1998, on Debtor/Plaintiff's Motion for Partial Summary Judgment, it was found, with Defendant's consent, that the Plaintiff was entitled to possession of certain glass-making equipment, including a glazier, iron kettles, and a burn-off machine. However, the Plaintiff indicated on the record that it did not want return of the machinery and equipment, but rather was seeking damages for the value of said equipment.

The genesis of this adversary proceeding relates back to the year 1990, in which the Debtor/Plaintiff and the Defendant entered into a handshake business agreement wherein the Defendant agreed to manufacture certain glass specialty items for the Plaintiff. In furtherance of this relationship, the Defendant agreed to house certain glass-making equipment owned by the Debtor/Plaintiff at its facility in Pennsylvania. Credible testimony at trial indicated that this loose business relationship lasted for only a very short period of time, and that only one major endeavor was undertaken to manufacture certain glass bells between the period of August 1990 and May 1995. The Court found defense witness, Jack Dereume, President of Raymond Dereume Glass, Inc., to be a credible witness. Mr. Dereume's testimony indicated that he had no real use for the equipment that was shipped to him in 1990, by the Debtor/Plaintiff, other than for making glass items specifically ordered by the Debtor/Plaintiff, and, in fact, the equipment was never used other than in the brief instances it was used in the business relationship between the

Debtor/Plaintiff and the Defendant. It is apparent that the Defendant acted as a storage facility for the equipment more than an on-going user of the equipment.

As indicated above, the brief loose business relationship between the Debtor/Plaintiff and the Defendant lasted for a period between August 1990 and May 1995. In the Spring of 1995, Debtor/Plaintiff requested that the Defendant return all of the equipment in its possession. It is undisputed that the majority of the equipment was, in fact, returned to the Debtor/Plaintiff; however, the Defendant retained in its possession a Manifold Phalor glazier, 10 cast-iron kettles, and one double burn-off machine. Credible evidence indicated that the Defendant retained this equipment based upon its claim that monies were owed to it by the Debtor/Plaintiff, and that it would release the equipment only upon payment by the Debtor/Plaintiff of a disputed invoice between the parties. At trial, Defendant indicated that it was willing to surrender the equipment in question with no further payment from the Debtor/Plaintiff on the disputed invoice and that it has been willing to do so for some time prior to the date of trial on this matter.

The Debtor/Plaintiff contends that the Defendant is guilty of conversion of the glass-making equipment in question, and, as such, the Debtor/Plaintiff is entitled to damages including the value of the equipment and for the loss of use of said equipment. There is no real dispute about the elements necessary in order for the Plaintiff to maintain an action for conversion. The parties agree that Illinois law should apply, and that the legal authority cited indicates that, in order for an action in conversion to be maintained, there must be a demand for return of the equipment and a refusal for return in such a case where the defendant was initially, rightfully in possession of the equipment. See: Hobson's Truck Sales, Inc. v. Carroll Trucking, Inc., 2 Ill. App.3d 978, 276 N.E.2d 89 (3rd Dist. App. Ct. Ill. 1971). Further, it is clear that a mere detention of another's chattels which rightfully came into one's possession is not an actionable conversion. See: Hobson, supra, at 91.

In the instant case, although there was a demand by the Debtor/Plaintiff for return of the equipment in question, there was clearly a valid dispute between the parties as to payments owed from the Debtor/Plaintiff to the Defendant. As such, the Court is unable to find that the Defendant's retention of the equipment in question after the Debtor/Plaintiff's demand for return was wrongful. Thus, no action in

conversion has been proven.

In addition to the Plaintiff's failure of proof on the issue of conversion, the Court concludes that the Plaintiff also failed to meet its burden of proof as to the valuation of the subject equipment. As noted above, the Court denied admission of the testimony of John Triggs as an expert on the Manifold Phalor glazier machine. The Court further finds that there was no other credible evidence showing that the machinery in question was worth anywhere near what the Plaintiff claimed. Additionally, the Court found that the testimony of Debtor/Plaintiff's principal, Gary Levi, was not credible as to the value of the equipment in question, nor as to the amount of damages sought for the loss of use of said equipment. As stated at trial, the Court found that Gary Levi has hopes and dreams about the money that could be made with the subject equipment, however, there was no solid basis presented to support these hopes and dreams. Pursuant to the July 13, 1998, Order on the Debtor/Plaintiff's Motion for Partial Summary Judgment the Plaintiff is certainly entitled to possession of the subject equipment, however, the Plaintiff has utterly failed to prove that the equipment has a value as suggested in the pleadings. Rather, it is apparent from the testimony of one of Plaintiff's own witnesses that there is not much of a market for this type of glass-making equipment at this point in time.

In addition to its claim for damages for the value of the equipment, the Plaintiff has asserted that it was damaged by virtue of the fact that it did not have use of the equipment for a substantial period of time. Here again, as with the testimony concerning valuation of the subject equipment, the Plaintiff has utterly failed to show that it was damaged by virtue of the fact that it did not have possession of the equipment between 1995 and the present. As noted above, the testimony of the Plaintiff's principal was filled with hopes and dreams, however, there was no concrete evidence presented to suggest that the Plaintiff in any way lost money by virtue of the fact that it did not have possession of the subject equipment during the period of time in question. This finding is buttressed by the fact that, although the Plaintiff asserts that the equipment in question has a great value and that a great deal of money can be made from its use, the Plaintiff took very little action, since 1995, to retrieve this "valuable" equipment. Even now, it is apparent that the Plaintiff would much rather have a sum of money than the equipment in question by virtue of the

fact that the Plaintiff doesn't even want to pay a shipping fee to have the equipment returned to Illinois from Pennsylvania. Under these facts, the Court must conclude that the equipment in question simply does not have the value that is claimed. Otherwise, the Court is sure that the Plaintiff would make every effort to retrieve it and either use or liquidate it.

In conclusion, the Court finds that the Plaintiff has failed to establish a conversion, pursuant to Illinois law, of the equipment in question. As such, although the Court has ruled that the Plaintiff is entitled to possession of the equipment, there has been no basis shown to enter judgment in favor of Plaintiff for the value of said equipment. Additionally, the Plaintiff has failed to prove any damages as a result of the loss of use of the equipment during the time period from March 1995 until the present. Therefore, Plaintiff's Adversary Complaint for Turnover of Property as it pertains to the Defendant, Raymond Dereume Glass, Inc., must be denied as to any relief sought beyond the ruling that the equipment in question should rightfully be in the possession of the Plaintiff.

ENTERED: September 25, 1998.

/s/ GERALD D. FINES
United States Bankruptcy Judge