

82-305

6-10-83

Judge,

Concerning this Agreed Order enlarging time to answer the Amended Counterclaim, the record shows that the Amended Counterclaim was filed on 5-3-83 (#19). Summons was not issued until 5-27-83 (#26).

On 5-23-83, the Court extended the discovery deadline from 6-1-83 until 7-16-83. The pre-trial conference is set for 7-25-83 and the trial is set for 8-24-83.

The Agreed Order extends the time for answering the Amended Counterclaim until 6-21-83.

Goomba's Partner in Crime

252-6731
Colson

233-2012
Wald

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THOMAS P. BELL
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DARRELL B. HANCOCK
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June 8, 1983

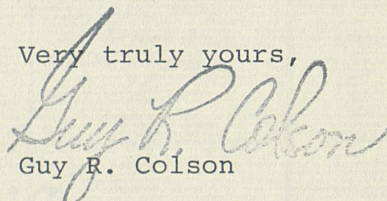
Hon. G. Wix Unthank, Judge
United States District Court
Eastern District of Kentucky
P. O. Box 278
Pikeville, KY 41501

RE: DON JACOBS FORD, LINCOLN-MERCURY, INC. v.
FORD MOTOR COMPANY, et al.
Civil Action No. 82-305

Dear Judge Unthank:

Please find enclosed Agreed Order in regard to answer of the Plaintiff and the Defendants, Don Jacobs and Ralph Stephens, to the Amended Counterclaim filed herein on behalf of Ford Motor Credit Company. We would appreciate entry of same.

Very truly yours,


Guy R. Colson

GRC:fmc
enclosure

cc: Jeff A. Woods, Esq.
WYATT, TARRANT & COMBS
1100 Kincaid Towers
Lexington, KY 40507

C/A 82-305, Don Jacobs v. Ford Motor and Ford Credit (franchise term.)

Preliminary conference, 1 March 1983, 4:00 P.M.

(This is a good story).

Plaintiff Jacobs assumed a Ford franchised dealership in Prestonsburg in 1979. Under this arrangement, Ford Motor would sell autos to Jacobs under a floor plan whereby Ford Credit would finance the purchase. When Jacobs would sell a vehicle, it would be financed (usually) through Ford Credit, with Jacobs guaranteeing payment of the consumer's obligation to Ford Credit (This seems to be SOP in this sort of business).

This franchise is based on 4 separate contracts, one each covering Ford, Lincoln, Mercury, and foreign cars. Under these contracts Jacobs was required to assign his to Ford Credit all his interest in each auto sold thru Ford Credit, who would handle all the collections. Upon default in payments, in "deserving cases", Ford Credit could string out the payments, even re-write the contract, without being required by the contracts to consult Jacobs.

A second provision of the contract requires Jacobs to repurchase from Ford Credit defaulted purchase contracts of repossessed autos, and Ford Credit must return the autos to Jacobs not later than 90 days after the earliest default date.

Jacobs says that Credit had a policy of contacting Jacobs before granting extensions on payments, but that this practice was stopped by Credit. Jacobs says:

Consequently, Ford Credit granted extensions to customers allowing them to retain possession of the auto while the customer was in default without (Jacobs) having any input into whether the extension should be granted. Ford Credit's granting of extensions to customers who had been in default for significant periods of time greatly increased (Jacob's) liability to Ford Credit" (clerk's emphasis).

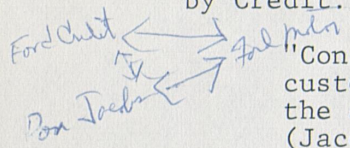
Jacobs says also that Ford Credit has not been returning repo autos within the 90 day period, in violation of the contract. Jacob says that when it demanded prompt return of the autos, Ford Credit froze all of Jacob's credit balances until Jacobs paid for the autos, and blocked Jacobs' ability to order new autos from Ford Motor.

Jacobs alleges bad faith by Ford Credit in negotiations over this issue, and coercion by Credit's superior bargaining position.

Alleging that Ford Credit made it impossible to buy more autos, Jacobs was forced to terminate its franchise with Ford Motor, by 30 days written notice. When Ford Motor failed to timely respond, Jacobs had to store his inventory in his facilities, at some expense, and lost chances to lease the facilities to others.

They squabbled a bit about the matter.

82-305-6731



25% COTTON FIBER

In 1982 FordMotor (some weeks after the 30-day notice expired) agreed to the termination, provided that, among other things, Jacobs execute a General Release to Ford Motor ("we hereby release Ford Motor from all liability to us except for such amounts as Ford may have agreed in writing to pay us, and will furnish Ford a satisfactory General Release"). At this time Ford was holding money owed to Jacobs, and would not discuss how much, or release it, until Jacobs signed the release. Jacobs refused, and claims bad faith and coercion by Ford Motor, and that there is no contractual obligation to sign the release.

Ford Credit, when Jacobs would not, or could not, pay the amount owed for inventory purchased from Ford Motor and financed by Ford Credit, repossessed all of Jacob's inventory by court order ("credit reputation", "embarassment", etc).

ISSUES RAISED BY JACOBS:

1. "Contemporaneous Construction" doctrine. (court relies on the way the parties interpreted the contract, based on their conduct. A.L. Pickens, 650 F.2d 120, Ky. 259 SW2 6(1953);
(c) Construction against drafter, Southern Bell, 415 SW2 826 (1967)etal.
2. Contractual Interference by Credit in contract between Jacobs and Ford Credit (Motor?). Davis, 513 F.2d 1176 (CA6, 1975), et al
3. Damage to business reputation. Per Se Libel and Slander. Tucker, 388 SW2 112 (1963).
4. "Dealer's Day In Court Act". Requires good faith in dealing in regards to franchise contracts. Woodward, 298 F.2d 121 (CA5,1962).

Plaintiff Jacobs prays for: Contract interpretation; contract enforcement; declaratory judgment on an issue; money (4.1 million); interest, atty fees, costs, TRIAL by jury.

DEFENDANTS answer separately (Ford Credit counter-claims) but brief jointly.

Jurisdiction is questioned under the Dealer's Day Act, as to Ford Credit (it not being an auto manufacturer),but is admitted under diversity.

Ford Credit admits demanding \$460,000 from plaintiff before it would release frozen accounts. This amount is claimed due on 40 defaulted contracts for which plaintiff is guarantor. This has increased to \$468,443 as of 23 June 1982 and increases monthly, per security agreements, and Jacobs has breached its contract by refusing to pay it.

BRIEF OF DEFENDANTS: Plaintiff voluntary terminated the franchise due to poor management and poor sales. Ford Motor has already agreed to repurchase Jacob's inventory, providing that it receives

the general release. No execution, no return of autos, which Ford re-sold anyway, at a loss to it of \$30,912, for which it seeks a deficiency judgment.

Defendants allege that Jacobs sold some auto "out of trust" (not financed by Ford Credit) before the termination. (I don't fully understand the implications of this - been too long since law school).

Ford Credit claims that it is entitled to prospective contingent liability of Jacobs for prospective losses on an uncertain percentage of defaults on 534 individual purchase contracts it obtained through Jacobs sales.

ISSUES RAISED BY DEFENDANTS:

1. Was Ford Motor obligated to re-purchase inventory prior to receipt of the General Release?
2. Are 1981 Ford Couriers (trucks?) "current models"? If so, Ford Motor is obligated to buy them back on termination. (My understanding on pickups, etc, is that it is current practice to re-label an unsold model of one year and advertise it as the next years model, unlike the case with sedans).
3. Was the repossession in a negligent manner or in breach of agreements between parties? Plaintiff never really attacks the method of repossession, or argues that it was done in violation of a contractual right.

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PLAINTIFFS

DON JACOBS FORD, LINCOLN,
MERCURY, INC.

DEFENDANTS

FORD MOTOR COMPANY and
FORD MOTOR CREDIT COMPANY

DEMAND FOR JURY

BY *Peff* DATE 7-23-82

CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE
IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

28 U.S.C. §1332 & §1441 - Diversity - & 15 U.S.C. § 1221 - Alleged breach
of contract. MB

ATTORNEYS

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606/252-6731

(Floyd Co.)

| CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS | FILING FEES PAID | | | STATISTICAL CA | |
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