Docket #0001 Date Filed: 9/5/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re NU RIDE INC., *et al.*,[1] Reorganized Debtors.	Chapter 11 Case Nos. 23-10831 (MFW), *et seq.* (Jointly Administered)
COHEN RECYCLING, INC., Plaintiff, vs. NU RIDE INC., Defendant.	Adv. Proc. No. _____

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs Cohen Recycling, Inc. ("Plaintiff"), by its undersigned counsel, hereby files this Complaint for Declaratory Relief against defendant Nu Ride, Inc., formerly known as Lordstown Motor Corp. ("Defendant" or the "Reorganized Debtor"), and in support hereof alleges as follows:

[1] The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Reorganized Debtors' service address is: Nu Ride Inc. c/o William Gallagher, CEO, M 3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

INTRODUCTION

1. This is a story of Let the Seller Beware. The Debtor sold uncertificated vehicles to Plaintiff without advising Plaintiff that it was a debtor in bankruptcy and without documenting the transaction beyond the execution (after the fact) of a single-page Maryland DMV form. When the Debtor found out that Plaintiff had begun selling them—in a legal manner—as off-road hobby kits/parts kits, the Debtor had seller's remorse and demanded that Plaintiff cease and desist. Only at that time did the Debtor reveal that it was a debtor in bankruptcy, and it threatened to obtain relief against Plaintiff from this Court if Plaintiff did not destroy the vehicles at its own expense—which would have defeated the entire purpose of the transaction.

2. This Court should not get involved in how Plaintiff uses the scrapped vehicles that it purchased from the Debtor. The privileges and rights of a non-debtor automotive-recycler over off-road vehicles are not within the purview of this Court's function overseeing a debtor in bankruptcy, especially because (although not limited to the fact that) the Debtor had not disclosed its bankruptcy to Plaintiff at the time of the sale or made Plaintiff aware of any order that allegedly pertains to such sale. Moreover, the Debtor does not even have standing to enforce or challenge those privileges and rights, as there is no contract or statute conferring such standing. Because the Debtor has raised threats of liability and

judicial action, the Court should therefore declare that Plaintiff may use, dispose, or sell (for parts or otherwise) the vehicles for any lawful purpose under Maryland law and that the Debtor has no standing or right to interfere with such use.

PARTIES

3. Plaintiff is a corporation organized under the laws of the State of Maryland, whose principal place of business is located in the State of Maryland.

4. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of Delaware.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 1334(a) and 157(b).

6. This is a core proceeding pursuant to 11 U.S.C. § 157(b)(2)(A), (N), and (O).

7. Plaintiff consents to the entry of final orders or judgments by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

8. Venue of this adversary proceeding is proper pursuant to 11 U.S.C. § 1409(a).

9. The predicates for the relief requested in this Complaint are 11 U.S.C. § 105(a), 28 U.S.C. § 2201, and Fed. R. Bankr. P. 7001(7) and (9).

FACTS COMMON TO ALL COUNTS

10. On June 27, 2023 (the "Petition Date"), Lordstown Motors Corp. and its affiliated debtors (the "Debtors"), including but not limited to Defendant, filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the "Court") commencing the above-referenced bankruptcy cases (the "Chapter 11 Cases"), which are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

11. Plaintiff operates a full service auto recycling business serving the Washington, D.C., metropolitan area for over 40 years, as part of a group of companies that sell, repair, and build custom vehicles and harvest parts for resale.

12. Among other things, Plaintiff is a licensed Automotive Dismantler and Recycler under Maryland law.

13. As part of its business, Plaintiff sells vehicles (and parts from vehicles), including vehicles that cannot be re-titled and are not intended for use on public roads, and in those instances, it discloses this limitation to purchasers.

14. On or about December 22, 2023, the Reorganized Debtor approached Plaintiff with a proposal to sell to Plaintiff thirty-one (31) Endurance vehicles (the "Vehicles").

15. Plaintiff and the Reorganized Debtor agreed that Plaintiff would purchase the Vehicles for $12,400 (the "Purchase Price"), to be towed by Plaintiff to its own facility from Washington, D.C., at Plaintiff's expense.

16. In accordance with that agreement, Plaintiff paid the Purchase Price to the Reorganized Debtor and towed the Vehicles at its expense.

17. At the time of the Purchase, Plaintiff understood orally from the Debtor that the Vehicles were not street-legal and should not be operated on public roads, but Plaintiff did not agree to any other conditions or limitations on the use or application of the Vehicles or their parts.

18. The Debtors understood that the Vehicles might be dismantled for parts and even made references to potential customers that might be calling for parts.

19. The parties did not execute an agreement of sale for the Vehicles. After the fact, the parties completed a one-page Maryland Form VR-454 for each of the Vehicles.

20. The Form VR-454s contained various representations by the Reorganized Debtor regarding the purpose of the transfers, specifically "for purposes of dismantling, destroying or scrapping" the respective Vehicles.

21. The Form VR-454s do not contain representations by Plaintiff, other than "affirm[ing] to the best of my knowledge and belief that I have complied with all applicable Federal and State laws."

22. At no time before this transaction was complete did the Debtor make Plaintiff aware that the Debtor was a debtor in bankruptcy.

23. Under Maryland law, an Automotive Dismantler and Recycler that is dismantling, destroying or scrapping a vehicle can legally take various acts, which might include (but is not limited to) removing certain parts and selling them to third parties.

24. An Automotive Dismantler and Recycler may also sell vehicles to third-parties for the purpose of dismantling, destroying or scrapping it.

25. Subsequent to payment of the Purchase Price and Plaintiff's towing the Vehicles to storage, Plaintiff identified that one legal and profitable method of recycling, scrapping, and/or dismantling them would be to sell them or their parts to third parties as off-road hot rod projects.

26. Plaintiff therefore began the process of marketing them for this purpose.

27. Consistent with applicable law, Plaintiff fully disclosed in all marketing that the Vehicles were not titled, were not roadworthy, and should not be operated on public roads.

28. Prior to the Reorganized Debtor's attempted intervention described below, Plaintiff had already sold four (4) of the Vehicles – two that appeared capable of being started, and two that were not.

29. When Plaintiff provided bills of sales they were specific that the Vehicles were being sold "For Parts Only" and that there would be "No Title."

30. The bills of sale also stated that the Vehicles were "Sold As Is" with "No Warranty" and did not suggest that any third parties (such as the Reorganized Debtor) warranted them in any way.

31. Plaintiff did not suggest in any way that it was selling the Vehicles on behalf of the Reorganized Debtor or as agent for the Reorganized Debtor.

32. On or about June 5, 2024, the Reorganized Debtor's counsel sent a letter to Plaintiff and demanded that Plaintiff cease and desist all sales of the Vehicles, threatening legal action if Plaintiff did not comply.

33. The Reorganized Debtor further demanded that Plaintiff provide it with the contact information of any buyers of Vehicles that Plaintiff had already sold.

34. The Reorganized Debtor further demanded that Plaintiff destroy the Vehicles.

35. It was in this communication that Plaintiff first became aware that the Reorganized Debtor was a debtor in bankruptcy.

36. Plaintiff is entitled to use the Vehicles that it purchased from the Reorganized Debtor to the extent permitted under applicable non-bankruptcy law.

37. The Reorganized Debtor was aware or reasonably should have been aware that Mr. Cohen's business included tinkering with, modifying, and reselling unique vehicles, and it should reasonably have anticipated that Plaintiff might choose to do that with the Vehicles.

38. If the Reorganized Debtor had determined that it was appropriate to sell the Vehicles subject to conditions and/or limitations, those conditions and/or limitations should have been included in a mutually agreeable signed contract.

39. There are no contractual, statutory, or regulatory limitations upon Plaintiff's right to resell the Vehicles so long as they are not being sold as street vehicles.

40. There are no contractual, statutory, or regulatory authorities requiring Plaintiff to destroy the Vehicles.

41. There are no contractual, statutory, or regulatory authorities requiring Plaintiff to police the further use or resale of the Vehicles by lawful purchasers of the Vehicles after they have been sold.

42. To the extent that any statutory or regulatory authorities otherwise limit Plaintiff's right to use or resell the Vehicles, there is no provision conferring standing upon the Reorganized Debtor to enforce such limitations.

43. In the June 5, 2024 letter, the Reorganized Debtor also attached a copy of this Court's Order (I) Authorizing, But Not Directing, The Debtors To Repurchase Endurance Trucks From Customers, And (II) Granting Related Relief (Docket No. 790 in the Chapter 11 Cases) (the "Repurchase Order").

44. The only alleged limitation in the Repurchase Order that might affect Plaintiff's disposition of the Vehicles is that the Vehicles "will be decommissioned and not resold to any third-party that intends to use vehicle [sic] for an on-road purpose." Repurchase Order ¶ 4.

45. Plaintiff submits that its use of the Vehicles is not in violation of ¶ 4 of the Repurchase Order because (i) the Vehicles were taken out of street use, (ii) Plaintiff does not intend to use the Vehicles for an on-road purpose, and (iii) to the extent that Plaintiff has sold or intends to continue selling the Vehicles, they will be sold only to buyers that did not and do not intend to use them for an on-road purpose.

46. In addition, Plaintiff did not have due process with respect to the Repurchase Order, as it lacked any actual, constructive, or other notice of the Repurchase Order, the motion seeking the Repurchase Order, or even the bankruptcy case at the time the Vehicles were purchased.

47. At the time it purchased the Vehicles from the Reorganized Debtor, Plaintiff acted in reliance upon the non-existence of further conditions or

limitations upon the Vehicles' use and resale when determining whether to purchase them, for what price, and other economic terms (such as the expense of towing, storage, etc.).

48. This is especially true insofar as the Reorganized Debtor did not disclose to Plaintiff that it was a debtor in bankruptcy, much less that the Repurchase Order had been entered by the Court.

49. The Repurchase Order is therefore not binding on Plaintiff, even if any part of it would otherwise limit Plaintiff's use and sale of the Vehicles.

50. Plaintiff has accrued substantial burden as a result of the purchase and the Defendant's subsequent acts, including but not limited to payment of the Purchase Price, towing expense, storing the Vehicles for over 6 months, and storage and disposal of the hazmat batteries.

51. Defendant's demands interfere with Plaintiff's permitted use of the Vehicles.

52. Even if Defendant were hypothetically correct that it has standing to enforce limitations upon Plaintiff's use of the Vehicles, then this may impact Plaintiff's disposition of the remaining Vehicles in its possession.

COUNT ONE
(Declaratory Relief)

53. Plaintiff incorporates all preceding paragraphs into this count as if fully re-alleged herein.

54. Plaintiff is the rightful owner of the Vehicles.

55. In selling the Vehicles to Plaintiff, Defendant did not reserve any contractual condition or limitation upon Plaintiff's use or sale of the Vehicles after the purchase that it might enforce against Plaintiff.

56. Absent such a contractual condition or limitation, Defendant has no right to demand that Plaintiff destroy the Vehicles, use them (or not use them) in specific ways, or sell or refrain from selling them.

57. Plaintiff's intentions for the disposition of the remaining Vehicles, Defendant's threats of legal action, and the costs that Plaintiff continue to incur while these issues are resolved make it appropriate for the Court to grant declaratory relief consistent with the foregoing.

58. Plaintiff does not have an adequate remedy at law.

WHEREFORE, Plaintiff requests that this Honorable Court enter an order of judgment:

(A) Declaring that (i) Plaintiff owns the Vehicles free and clear of all interests and rights of the Reorganized Debtor, and (ii) Plaintiff is permitted to keep, use, and/or sell the Vehicles free of all interference

by the Reorganized Debtor, to the extent permitted by applicable non-bankruptcy law; and

(B) Declaring that (i) Defendant has no interest in the Vehicles, and (ii) Defendant has no right or standing to assert any condition or limitation upon Plaintiff's use or sale of the Vehicles; and

(C) Granting Plaintiff such further relief as this Court deems just and proper.

Dated: September 5, 2024
Wilmington, Delaware

Respectfully submitted,

HILLER LAW, LLC

/s/ Adam Hiller

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NOTICE OF DISPUTE RESOLUTION ALTERNATIVES

As party to litigation you have a right to adjudication of your matter by a judge of this Court. Settlement of your case, however, can often produce a resolution more quickly than appearing before a judge. Additionally, settlement can also reduce the expense, inconvenience, and uncertainty of litigation.

There are dispute resolution structures, other than litigation, that can lead to resolving your case. Alternative Dispute Resolution (ADR) is offered through a program established by this Court. The use of these services are often productive and effective in settling disputes. **The purpose of this Notice is to furnish general information about ADR.**

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The ADR structures used most often are mediation, early-neutral evaluation, mediation/arbitration and arbitration. In each, the process is presided over by an impartial third party, called the "neutral".

In mediation and early neutral evaluation, an experienced neutral has no power to impose a settlement on you. It fosters an environment where offers can be discussed and exchanged. In the process, together, you and your attorney will be involved in weighing settlement proposals and crafting a settlement. The Court in its Local Rules requires all ADR processes, except threat of a potential criminal action, to be confidential. You will not be prejudiced in the event a settlement is not achieved because the presiding judge will not be advised of the content of any of your settlement discussions.

Mediation/arbitration is a process where you submit to mediation and, if it is unsuccessful, agree that the mediator will act as an arbitrator. At that point, the process is the same as arbitration. You, through your counsel, will present evidence to a neutral, who issues a decision. If the matter in controversy arises in the main bankruptcy case or arises from a subsidiary issue in an adversary proceeding, the arbitration, though voluntary, may be binding. If a party requests *de novo* review of an arbitration award, the judge will rehear the case.

Your attorney can provide you with additional information about ADR and advise you as to whether and when ADR might be helpful in your case.

Date: September 5, 2024

/s/ Una O'Boyle
Clerk of Court