Docket #0003 Date Filed: 9/26/2024

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. and FOXCONN EV TECHNOLOGY, INC., and FOXCONN EV SYSTEM LLC, Defendants.	Adv. Proc. No. 24-50127-MFW

FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs Cohen Recycling, Inc. ("Plaintiff"), by its undersigned counsel, hereby files this First Amended Complaint for Declaratory Relief against

[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.

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defendant Nu Ride, Inc., formerly known as Lordstown Motor Corp. ("Defendant" or the "Reorganized Debtor"), Foxconn EV Technology, Inc. and Foxconn EV System LLC (with Foxconn EV Technology, Inc., "Foxconn"), and in support hereof alleges as follows:

INTRODUCTION

1. This is a story of Let the Seller Beware. The Debtor sold uncertificated vehicles to Plaintiff without advising Plaintiff that it was purportedly selling them in accordance with an order of Court in its 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 marketing and selling them—in a legal manner—as off-road hobby kits/parts kits and for parts, the Debtor had seller's remorse and demanded that Plaintiff cease and desist. Only at that time did the Debtor reveal that it interpreted an undisclosed order of the Bankruptcy Court to apply to the sale, 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 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 and the Debtor has shown no harm. 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.

3. Although Foxconn played no known role in the transaction between Plaintiff and the Debtor, Foxconn joined in a Motion For (A) Entry of an Order Enforcing the Vehicle Decommission Order and (B) For Related Relief (main case Docket No. 1314) filed by the Reorganized Debtors in connection with substantially the same issues that were raised in this adversary proceeding. Foxconn has therefore been made a party to ensure that the Court's holdings in this adversary proceeding are binding upon Foxconn.

PARTIES

4. 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.

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

6. Upon information and belief, Foxconn EV Technology, Inc. and Foxconn EV System LLC are entities formed or incorporated under the laws of the State of Ohio.

JURISDICTION AND VENUE

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

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

9. 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.

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

11. 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

12. 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 for relief under Chapter 11 of the Bankruptcy Code 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).

13. 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.

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

15. 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.

16. 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").

17. 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.

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

19. 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.

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

21. The parties did not execute an agreement of sale for the Vehicles.

22. The parties completed a one-page Maryland Form VR-454 for each of the Vehicles.

23. 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.

24. 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."

25. At no time before this transaction was complete did the Debtor make Plaintiff aware that the Debtor believed or asserted that the sale was governed by, subject to, or otherwise limited by an Order of the Bankruptcy Court.

26. 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.

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

28. 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.

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

30. 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.

31. Prior to the Reorganized Debtor's attempted intervention described below, Plaintiff had already sold two (2) of the Vehicles to a third party.

32. 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."

33. 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.

34. 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.

35. Among the remaining Vehicles, two have been disassembled and one is in the process of disassembly.

36. 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.

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

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

39. It was in this communication that Plaintiff first became aware that the Reorganized Debtor believes or asserts that Plaintiff's purchase of the Vehicles from the Debtor were governed by, subject to, or otherwise limited by an order of the Bankruptcy Court.

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

41. 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.

42. 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.

43. 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.

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

45. 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.

46. 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.

47. 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").

48. 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.

49. Plaintiff submits that, even if this language applies to Plaintiff, 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.

50. 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 or the motion seeking the Repurchase Order at the time the Vehicles were purchased.

51. 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.).

52. This is especially true insofar as the Reorganized Debtor did not disclose to Plaintiff its position that the sale was allegedly governed by, subject to, or otherwise limited by the Repurchase Order.

53. 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.

54. 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.

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

56. 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)

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

58. Plaintiff is the rightful owner of the Vehicles.

59. 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.

60. 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.

61. 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.

62. 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 26, 2024
Wilmington, Delaware

Respectfully submitted,

HILLER LAW, LLC

/s/ Adam Hiller

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
NU RIDE INC., *et al.*,[1]	Case Nos. 23-10831 (MFW), *et seq.*
Reorganized Debtors.	(Jointly Administered)

DECLARATION OF ANDREW COHEN IN SUPPORT OF FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF

Andrew Cohen, being over the age of eighteen years and having knowledge of the facts set forth herein, declares in accordance with 28 U.S.C. § 1746 that he has reviewed the attached First Amended Complaint, and the facts set forth therein are true to the best of his knowledge, information, and belief.

I HEREBY DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT ON PERSONAL KNOWLEDGE.

9/26/24
Date

Andrew Cohen

[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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused copies of the foregoing First Amended Complaint for Declaratory Relief to be served via electronic mail upon:

Name	**Email address**
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Dated: September 26, 2024
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