

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	: No.
	:
	:
vs.	: CIVIL ACTION - LAW
	:
One 1987 Mack Truck,	:
VIN 1M1N267X7HA002890,	:
Pennsylvania License	:
Number YW16226	:

ORDER

AND NOW, this ____ day of May 1999, this Order is entered after conference and argument held before the Court on May 12, 1999.

The purpose of this Order is to supplement the Court's two (2) prior orders of April 12, 1999 (Process for Seizure) and the Amended Order Re Seizure of Vehicle entered by the Court on April 21, 1999.

First, the Amended Order was mistakenly entered to the wrong caption and the appropriate caption for such Order should be considered the same as the caption as listed to this Order.

Next, the Court finds that the Office of Attorney General has established sufficient possession of the 1987 Mack truck VIN1M1N267X7HA002890, Pennsylvania license number YW16226, by the Court's Orders of April 12, 1999 and April 21, 1999, to file a Forfeiture Petition in accordance with 35 P.S. Section 6018.614. The Court requests that the Commonwealth file any forfeiture petition within thirty (30) days of the date of this Order, so that everyone involved will promptly know the Commonwealth's intentions with respect to the vehicle.

The Court will supplement its Orders of April 12, and April 21, 1999 as follows:

The owners of the 1987 Mack truck, Michael W. Farmer and M.W. Farmer Company, may maintain physical possession of the vehicle during the pendency of the Forfeiture proceeding, subject to the conditions contained in the Court's Order of April 21, 1999, as clarified below, and the additional conditions set forth in this Order. The Court notes provision number 1 in the April 21 Order does not preclude the owners from the normal use of the vehicle in their business endeavors. The owners must maintain the vehicle in its current condition, subject to normal depreciation from its usage.

The following conditions are added to preserve the Commonwealth's potential interest in the vehicle.

The Commonwealth should be provided a reasonable opportunity to appraise the vehicle in question to confirm vehicle identification number, and to determine its current condition, and current market value. The owners should fully cooperate with the Commonwealth, allowing them access to the vehicle at a reasonable time and place. The Commonwealth shall be responsible for the costs of such appraisal. The Court will expect Attorney Abeln and Attorney Tomsho to arrange the time and date of this appraisal.

Counsel for the owners shall provide copies or proof of ownership and insurance for the vehicle in question. Counsel for the owners may send such documentation to counsel for the Commonwealth.

The owners or counsel for the owners shall provide copies of records or a summary of records as to maintenance of the vehicle. These records need only be provided every three (3) months and only if requested by the attorney for the Commonwealth. Such records shall be maintained by the owners for the duration of the Forfeiture action so they will be available if needed during the Forfeiture proceeding.

Further, the Court will stay the Forfeiture action after the Commonwealth files its Forfeiture action. This stay will apply until the pending criminal charges against the owners are litigated through the Pennsylvania Appellate Court system. The stay will be automatically lifted upon the completion of the appeal process. Upon completion of the appeal process, the Commonwealth or the owners may contact the District Court Administrator, and request a Civil Scheduling Conference on the Forfeiture action. This conference will establish trial date, motions dates, discovery cutoffs and any other applicable procedure for the litigation of this case.

The Court notes that it is permitting the owners to maintain possession and reasonable use of the vehicle during the pending of this matter because the Court believes this to be the fairest procedure to govern this particular situation. In addition, the Court notes the owners are a family business and that this 1987 vehicle is instrumental to their business operation. The owners, by virtue of sentencing in the criminal matter, have been subjected to substantial fines. Further, they have incurred a substantial cost for a site assessment which finds no contamination in the steam cleaning area. It is better for all concerned to allow the owners the ability to maintain gainful employment so they may ultimately address these significant costs and fines.

The Court, in permitting the owners possession of the vehicle pending forfeiture, will note some concerns it has with seizure and forfeiture in this case. 47 P.S. Section 6-602(e) states that the “Court may, in its discretion, adjudge same forfeited and condemned as hereinafter provided”. The Court is concerned that the punishment for this case could tend to exceed the crime if the vehicle is forfeited. Hazardous waste was not dumped in this case. The owners are suffering significant financial repercussion for the conviction. The vehicle in question

is apparently integral to a family business operation. The vehicle has not prior been seized or forfeited for a five (5) year period from the time of the unlawful use of the vehicle. We do not mean to imply any inappropriate or improper ulterior motives to the Commonwealth in this action. Rather, there may be a problem with laches and/or for the equities of the situation may bode toward an exercise of discretion in a manner that may defeat forfeiture in this case. However, such an issue can be better litigated at the time when the stay is lifted in the Forfeiture action.

Finally, the Court notes that the seizure orders and this order relate to a potential forfeiture of the vehicle and not the underlying criminal action. Therefore, the Court directs the Lycoming County Prothonotary to transfer this Order as well as the Order of April 12, 1999 and April 21, 1999 to a new civil number. If there is any fee for such a transfer it shall be placed on the Commonwealth. If a forfeiture petition is filed, it would also be filed to this new civil number.

Accordingly this Order shall now govern the progression this matter.

By The Court,

Kenneth D. Brown

cc: Gregory Abeln, Esquire
Richard Tomsho, Esquire
Prothonotary
Kevin Way, Esquire (CA)