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**In re Vincent Lawrence LEONARDO, dba Delta Marketing, Debtor.**

**Bankruptcy No. 288-02418-B-11.**

**Motion No. MN-1.**

United States Bankruptcy Court,

E.D. California.

July 28, 1989.

**\*203** Casey C. Marciniak, Sacramento, Cal., for debtor.

Rodney G. Commons, Nageley & Meredith, Sacramento, Cal., for trustee.

OF TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION

ORDER SUSTAINING TRUSTEE'S OBJECTION

DAVID E. RUSSELL, Bankruptcy Judge.

The estate's trustee has objected to the Debtor's attempt to claim his 1957 MGA automobile as exempt property pursuant to California Code of Civil Procedure ("CCP") § 704.040 which provides an exemption for, inter alia, "heirlooms" and "works of art". [FN1] Although during oral arguments the Debtor conceded that the MGA could not qualify as an "heirloom" as it was not handed down to him by his ancestors, [FN2] he insists that the automobile qualifies as a "work of art" by virtue of the fact that it is a restored antique or vintage automobile.

FN1. CCP § 704.040 provides as follows;  
Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed two thousand five hundred dollars (\$2,500). (Added by Stats.1982, c. 1364, § 2.)

FN2. The commonly accepted definition of an "heirloom" is a valued possession of great sentimental value passed down through generations within a family. (Black's Law Dictionary).

See also 39A C.J.S. Heirlooms, at p. 645; 29 C.J. p. 346, Nt. 16 (in accord).

This court has found the case law which pinpoints the definition of "art" to be scarce, and no California case law appears to grapple with the definition of a "work of art" as it relates specifically to CCP § 704.040 as revised in 1982. Consequently, this court will adopt the Ninth Circuit's definition of a "work of art" in the context of intellectual property law;

A thing is a work of art if it appears to be within the historical and ordinary conception of the term "art". ([Rosenthal v. Stein, 205 F.2d 633, 635 \(9th Cir.1953\)](#)).

Turning to the preeminent legal encyclopedia, Corpus Juris Secundum, the term "work of art" is defined as follows;

As generally used, it has been said that the term is difficult to define; but the definitions of artists and lexicographers are any human work made with the specific purpose of stirring human emotion; something displaying artistic merit; anything in the formation or into the accomplishment of which art in any sense has entered; specifically, a production of any one of the fine arts, a skillful production of the beautiful invisible form, the handiwork of an artist, or something more than the mere labor of an artisan; and the term has been said to include all works belonging fairly to the so-called fine arts, painting, drawing, and sculpture ... (6A C.J.S. § 57 at p. 291 (Emphasis added)).

Although the manufacturers of the MGA undoubtedly hoped that the 1957 design would "stir human emotion", it is unlikely that this was their overriding concern in deciding to produce the vehicle. Simply put, and consistent with the above definition, to qualify as "Art", an object must have been created primarily for art's sake; that is, whether something qualifies as "art" depends upon the subjective intent of the creator.

There can be no question that the primary concern of an automobile manufacturer is to satisfy its shareholders by creating a marketable product. Thus, although the designer's sketch of the MGA might qualify as "art", the mechanics of assembling the parts is nothing more than "work" [FN3] while the finished vehicle could not qualify as anything more than the **\*204** "product" [FN4] it was intended to be from the

beginning. Furthermore, although the craft of restoration could be termed "artful" by itself, the singular act of restoring an object to its former splendor will not suffice to recharacterize the non-art object into one of art ("a rose by any other name is still but a rose").

FN3. Work is defined by Webster as follows;

1) Physical or mental effort or activity directed toward the production or accomplishment of something; Labor ...

(Webster's II, New Riverside University Dictionary (1984)).

FN4. Product has been defined by the Webster's Dictionary as

1) Something produced by human or mechanical effort or by a natural process. 2) A direct result: Consequence ... 4) Math.

a) The result arrived at by performing multiplication.

(Webster's II, New Riverside University Dictionary (1984)).

Although it might be accused of floundering in semantics, this court finds that a 1957 MGA automobile, irrespective of its condition, is at best a "product of art", but not a "work of art" for the purposes of C.C.P. § 704.040. Consequently, it is hereby

ORDERED that the Trustee's objection to the Debtor's attempt to claim said automobile as exempt will be and is hereby SUSTAINED.