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# Bankruptcy claims allege funds misuse

Creditors say executive misappropriated \$3.5M

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Creditors are circling a one-time Kansas City popcorn king who they claim misappropriated more than \$3.5 million.

Kert Rabe, a Leawood entrepreneur who once co-owned Golden Harvest Products Inc., faces a \$2.6 million claim from Ford Motor Credit Co. and a \$629,130 claim from U.S. Bank, according to filings in Rabe's Chapter 7 bankruptcy in the U.S. Bankruptcy Court of Kansas. Both filings say Rabe violated credit agreements and misappropriated money for personal use.

Another party accusing Rabe of misusing money is Chris Boyd, owner of now-defunct popcorn company Encore Products LLC. Boyd hired Rabe as Encore's president in January 2004 and said Rabe misused \$945,000 during an 18-month period, about two-thirds of it through the company's credit agreement with U.S. Bank.

Boyd closed his Grandview company in August and filed for personal bankruptcy Sept. 13, reporting liabilities of \$3.8 million. According to a Nov. 23 filing by the bankruptcy trustee in Boyd's case, Boyd intends to submit a claim in Rabe's bankruptcy case by late January.

"What I hope is that they can recover as much as possible so the banks can get repaid," Boyd told the Kansas City Business Journal. "The liability that Kert created is my responsibility."

Rabe's bankruptcy lawyer, Cynthia Grimes of Grimes & Rebein LC, withdrew in November. Rabe's family lawyer, Michael Fatall of Sanders Simpson & Fletcher LC, said he is trying to find a new bankruptcy lawyer for the case.

Attempts to reach Rabe for comment for this story were unsuccessful. Rabe's phone number is unlisted. Grimes and Fatall declined to provide contact information for Rabe. He did not answer the door at his home or respond to a request for comment left at his home.

Encore's lawyer, Allan Hallquist of Blackwell Sanders Peper Martin LLP, said Boyd hired financial consulting firm IronHorse LLC to conduct an audit, which the firm said revealed Rabe's alleged misappropriations.

"Since I can't say anything good about Mr. Rabe, I won't say anything at all," Hallquist said.

The audit has not been disclosed as an exhibit in court filings.

IronHorse principal Tony Wayne said he conducted the audit and uncovered more than 440 questionable transactions by Rabe while he was Encore's president. The first several, Wayne said, were from the account at **Metcalf Bank**. When Encore opened a line of credit with U.S. Bank in April 2004, Rabe began making transfers from that account, Wayne said.

U.S. Bank's Nov. 23 claim in Rabe's bankruptcy case is based on IronHorse's findings, Wayne said. The claim outlined 68 transfers Rabe made between April 2004 and March 2005 that allegedly were unrelated to Encore's business. The \$629,000 in transfers went to everything from personal bank accounts to wireless phone service providers to some of Rabe's other business ventures, according to U.S. Bank's filing. In May 2004, the claim states, Rabe transferred \$8,599 from the company's account to Freedom Cycles Inc., a Suzuki motorcycle dealership in Grandview.

"There's nothing in U.S. Bank's filings that would pertain to Encore's business," Wayne said. "That was a personal four-wheel vehicle that he bought for himself, an ATV."

U.S. Bank's claim states that Rabe made five transfers totaling \$88,600 to HRL LLC, an entity Rabe created that owns property leased by Superior Automotive Group on Shawnee Mission Parkway, according to Johnson County real estate records. Rabe states in his bankruptcy that he sold his 50 percent interest in HRL in January 2004. U.S. Bank's filing states that he directed money from Encore's credit line to HRL between September 2004 and March 2005.

U.S. Bank's claim doesn't say what happened to the money directed to HRL. Rabe's bankruptcy, which lists HRL as an unsecured creditor, doesn't say who owns the company. The Kansas secretary of state's office lists Rabe as resident agent, as of December 2004.

Rabe's bankruptcy case, which he voluntarily filed May 27, reports personal assets of \$981,871 and liabilities of \$7.28 million. The 72-page document lists 16 businesses that Rabe owned all or part of in the past six years. His case lists as debtors two entities he still owns -- Klecan Construction Co. and Miller Ranch Development.

Miller Ranch is an 11-year-old residential development in Manhattan, Kan., that has about 60 single-family lots. In late 2004, Rabe received city approval to start a third phase that would make room for 111 homes, said Eric Cattell, assistant director of Manhattan's planning division, who is familiar with the development.

"They never put the streets in because I think he got into some difficulties," Cattell said.

Before delving into dealerships and development, Rabe was co-owner and president of fast-growing Golden Harvest, an Overland Park company that made wholesale ready-to-eat popcorn and employed 110. In 1997, the company merged into Illinois-based Houston Foods Co., forming Houston Harvest Gift Products LLC. Financial terms of the deal were not disclosed.

After leaving the popcorn business, court records show that Rabe invested heavily in auto retailers, buying stakes in companies including Olathe Chrysler Jeep Inc., International Autosport Inc. and used-car dealership Crazy Auto of Grandview.

On Aug. 22, Ford Motor Credit filed a claim in Rabe's bankruptcy case, alleging that Olathe Chrysler Jeep violated a 2001 wholesale financing agreement by selling at least 41 vehicles without paying Ford Motor Credit the amount financed for each. Rabe was majority owner of Olathe Chrysler Jeep, according to Ford Motor Credit's claim. Rabe's filing doesn't disclose his ownership stake in the dealership.

A 2003 inventory audit of the dealership, the claim stated, also found that two Mercedes and one Porsche at Olathe Chrysler Jeep -- financed by Ford Motor Credit for \$338,700 -- were sold without compensating the credit company. The claim accuses Rabe and his wife, Susan, of using the cars as their personal vehicles, selling them and retaining the proceeds "for their own personal benefit."

Ford Motor Credit, which won a September 2004 judgment against the Olathe dealership in Johnson County Circuit Court, stated in its bankruptcy claim that Rabe and his wife still owe it \$2.6 million for the wholesale financing violations.

Ford Motor Credit's lawyer, Thomas Lasater of Fleeson Gooing Coulson & Kitch LLC in Wichita, was unavailable for comment.

Chris Boyd said that he met Rabe more than two years ago and that Rabe was eager to start another popcorn company geared toward wholesale. After 15 years as a mutual fund manager at American Century Investments, Boyd left the company in 2003 with thoughts of investing in a startup. He and Rabe launched Encore in January 2004. Boyd was the sole owner but left day-to-day management to Rabe and his team, many of whom had worked at Golden Harvest. At its peak, the company had about 12 employees.

By early 2005, Boyd said, he was concerned about Encore's faltering earnings and untimely financial reporting. He hired IronHorse, and Wayne said the

consulting firm quickly found a number of potential misappropriations. Among other things, Boyd said, Rabe was inflating Encore's receivables and inventory so he could draw more from lenders. Boyd said he fired Rabe in June.

Boyd said the financial effect of those inflations on Encore was about \$1.5 million.

"He was borrowing more money than the company could afford to pay back," Boyd said.

Boyd said he and U.S. Bank tried to find additional investors to help save Encore. Those efforts failed, and the bank foreclosed on the company in mid-August.

**Stephen Roth**

Staff Writer