

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

JON L. NEIMAN TRUST, )

DEBTOR )

CASE NO. BK87-2073

JOURNAL ENTRY

This matter came on for hearing on September 9, 1987, on the Court's Motion to Dismiss. Jon R. Neiman appeared as the Trustee for the Jon L. Neiman Trust. Appearing on behalf of the Toy National Bank, a creditor, was A. Frank Baron of Sioux City, Iowa. Toy National Bank entered an oral motion to dismiss at the time of hearing.

On September 9, 1987, the debtor was ordered to submit to the Court within 10 days a copy of the trust agreement, employment agreements, if any, and copies of income tax returns for the previous five years. The debtor has not complied with the Order in that none of these documents have been received by the Court. A copy of the trust agreement was attached to a brief filed by Toy National Bank and shall be considered as evidence.

The issue in this case is whether or not the Jon L. Neiman Trust is a business trust and, therefore, an eligible debtor under Chapter 11. This Court has previously ruled on the issue of the eligibility of a trust as a business trust in In re Betty L. Hays Trust, 65 B.R. 665 (Bkrcty. D. Neb. 1986). In that case, the Court found that the trust in question had been set up primarily for the purpose of the protection and preservation of a trust res for family members. It further found that, although the trust agreement authorized the trustee to engage in business, the trust agreement was not created for the purpose of carrying on some kind of business or commercial activity, a requisite for finding a trust to be a business trust. In reaching its decision, the Court relied in part on the most frequently cited case with regard to defining business trusts, In re Treasure Island Land Trust, 2 B.R. 332 (Bankr. M.D. Fla. 1980), which case contains the following language:

The basic distinction between business trusts and non-business trusts is that business trusts are created for the purpose of carrying on some kind of business or commercial activity for profit; the object of

a non-business trust is to protect and preserve the trust res. The powers granted in a traditional trust are incidental to the principal purpose of holding and conserving particular property, whereas the powers within a business trust are central to its purpose. It is the business trust's similarity to a corporation that permits it to be a debtor in bankruptcy.

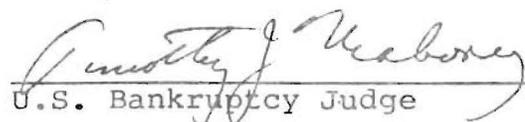
Id. at 333. The Court also relied on In re Mosley, 791 F.2d 628 (8th Cir. 1986), an Eighth Circuit case that affirmed a ruling by the U.S. District Court for the Eastern District of Missouri that a trust created by the grantor for the benefit of his children was not a business trust.

The Court finds that the reasoning that applied in Betty L. Hays Trust also applies in the instant case. This trust agreement is also a trust set up by a grantor for the benefit of his children. Although the trustees are empowered in Article 5 to engage in business, this is not the primary purpose of the trust, but rather an incidental power of the trustees. There is no requirement that the trustees engage in business. This Court believes that the primary purpose of a business trust must be that of carrying on a business or commercial activity. Therefore, the Court finds that the trust in the instant case is not a business trust and thus is not an eligible debtor under Chapter 11.

The Jon L. Neiman Trust is not an eligible debtor under Chapter 11. The case is dismissed.

DATED: October 26, 1987.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies to:

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