

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
ROBERT W. LADEHOFF and )  
DARLEEN A. LADEHOFF, d/b/a )  
LADEHOFF GRAIN COMPANY and )  
LADEHOFF TRANSPORTATION COMPANY, ) CASE NO. BK85-2351  
 )  
DEBTORS ) A86-77  
 )  
MERLE J. NICOLA, Trustee, )  
 )  
Plaintiff )  
 )  
vs. )  
 )  
NORTHEAST NEBRASKA TELEPHONE )  
COMPANY )  
 )  
Defendant )

MEMORANDUM OPINION

This matter came on for hearing on August 21, 1986, on the trustee's complaint for turnover of funds from the defendant, the funds being capital credits in the Northeast Nebraska Telephone Company. Appearing for the trustee was Clay Rogers of Omaha, Nebraska. Appearing for the defendant was Robert Scoville of South Sioux City, Nebraska.

At the status hearing, the parties agreed to submit the matter on stipulated facts and briefs. The stipulated facts are as follows: the debtors, Robert W. Ladehoff and Darleen A. Ladehoff, were patrons of the defendant, Northeast Nebraska Telephone Company (the "Company"). The debtors filed for relief under Chapter 7, Title 11 U.S.C., on or about October 15, 1985. The plaintiff, Merle Nicola, is the duly appointed and acting trustee of debtors' estate. The debtors were holders of capital credits in the Company in the amount of \$7,358.84 as of December 16, 1986. It has been the policy of the Board of Directors of the Company to pay out capital credits upon the death of a patron or upon the bankruptcy (or "death") of a corporation when it has been shown that the payout will cause no financial impairment of the Company.

The trustee has filed an action for turnover of the capital credits held by the Company, claiming that the debtors' bankruptcy is actually a business bankruptcy. Trustee claims that there has been a de jure death of the debtors' business which entitled the debtors to a payout of their capital credits. The Company has refused to pay the capital credits, claiming that the debtors are individual patrons who are not entitled to a payout because there has been neither the death of an individual nor the bankruptcy of a corporation. The Company also claims that there has been no showing that a payout would not create a financial impairment of the Company.

Both parties agree that In re Great Plains Royalty Corporation, 471 F.2d 1261 (8th Cir. 1973) controls this case. Having reviewed the file and that case, this Court finds that the trustee of the debtors' estate is not entitled to a payout of the capital credits. The Eighth Circuit found that the retirement of capital credits on the "death of any patron" had to be construed to apply to the claims of a trustee of a bankrupt corporation. However, the Court also held that an individual bankrupt continued to live and could continue his patronage and, therefore, would not be qualified for an acceleration of his capital benefits. In re Great Plains Royalty Corporation, 471 F.2d 1261, 1265 (1973). There is no corporate bankruptcy in the instant case. Granted, the debtors' businesses were liquidated in their Chapter 7 bankruptcy, but they filed as individuals, and neither business was a corporation. Their individual as well as their business property was liquidated. The debtors as individuals, albeit engaged in a business, contracted to become members of the Company. There has been neither the death of an individual here nor the "death" of a corporation, so no capital credit payout is required of the Company. Pursuant to 11 U.S.C. § 541, the capital credits are part of the bankruptcy estate. However, the trustee is not entitled to a payout because of the terms of the agreement between the Company and the debtors. The trustee does have a vested interest in the capital credits, which interest he may sell, hold until it matures or abandon.

The trustee has also raised the issue of the existence of the corporation (the Company) itself. That issue is one for a State Court to determine and this Court declines to issue a decision on it. This case should be and hereby is dismissed.

DATED: August 7, 1987.

BY THE COURT:

  
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U.S. Bankruptcy Judge

Copies to:

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