

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE:

TREE OF LIFE M. B. CHURCH
a/k/a TREE OF LIFE BAPTIST CHURCH,

BK #88-25298-WHB
Chapter 11

Debtor.

**MEMORANDUM OPINION AND ORDER ON
MOTION OF TRI STATE BANK OF MEMPHIS
TO DISMISS CASE**

This core proceeding ¹ is before the Court on the motion of Tri State Bank of Memphis (hereinafter "Bank") to dismiss the debtor's Chapter 11 petition. At issue is whether the debtor is eligible, as a matter of law, for relief under Chapter 11 of the Bankruptcy Code. The following constitutes findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052.

The debtor filed its voluntary Chapter 11 petition on July 28, 1988. The debtor's statement of financial affairs filed with the Court reflects that it is an independent church and non-profit organization which has been granted tax exempt status. The debtor's operations and business affairs are governed by a board of trustees consisting of twenty-eight members; its source of income is congregational donations. The deacons and trustees voted unanimously to file the Chapter 11 petition. The petition is signed by the chairman of the board of trustees.

¹ See 28 U.S.C. §157(b)(2)(A).

The petition further reflects that there are twenty-seven holders of unsecured claims totalling \$153,300.00 and one holder, the Bank, of a secured claim in the amount of \$250,000.00. The Bank's claim is secured by the debtor's real estate and church building which the debtor values at \$650,000.00. However, the Court has received stipulated proof that the Bank's appraiser places the value much lower but still above the secured claim.

It is the Bank's contention that because state law vests title to the real estate acquired by a "religious denomination or society" in its board of trustees for the benefit of its members, the debtor here is a "trust." T.C.A. §66-2-202. Moreover, the debtor is admittedly a non-profit organization. Therefore, according to the Bank, the debtor is ineligible for chapter 11 relief because it is a non-business trust.

This Court agrees with the Bank's contention, and the cases in support thereof, that non-business trusts, or trusts with the principal purpose of preserving the trust res, are generally ineligible for relief pursuant to chapter 11 of the Bankruptcy Code. See, inter alia, In re Johnson, 82 B.R. 618, 619 (Bankr. S.D. Fla. 1988); In re Cooper Properties Liquidating Trust, Inc., 61 B.R. 531, 535 (Bankr. W.D. Tenn. 1986); In re Arehart, 52 B.R. 308, 310 (Bankr. M.D. Fla. 1985) and In re Gonic Realty Trust, 50 B.R. 710, 713 (Bankr. D. N. H. 1985); see generally In Matter of Winshall Settlor's Trust, 758 F. 2d 1136 (6th Cir. 1985). However, for the reasons set forth infra, the Court is not persuaded that the debtor in this proceeding possesses the characteristics of a non-business trust or any other non-business entity which would render it ineligible for relief under federal bankruptcy law; for it is federal bankruptcy law which this Court believes governs resolution of the issue of eligibility. As set forth in the Arehart decision,

to hold otherwise would result in different results in different states and an entity would be eligible for relief in one state but not another. Clearly, this is not what

Congress intended when it enacted the bankruptcy laws in this country in conformity with the mandate of Article I, §8, Cl. 4 of the Constitution, which provides that 'Congress shall have the power. . . to establish uniform laws on the subject of bankruptcies.'

52 B.R. 310-311. Moreover, "[n]o state scheme can override Congress's own intention as to who should be eligible for bankruptcy relief . . ." In re Colorado Ind. Bank of Ft. Collins, 84 B.R. 735, 738 fn. 2 (Bankr. D. Col. 1988).

Clearly, given this premise, state law classification of the debtor is of little import in the instant situation. However, assuming state law were pertinent for the sake of argument, it is doubtful that the debtor would be classified as a non-business trust thereunder. This is because T.C.A. §66-2-202, which is relied upon by the Bank as supporting its proposition that the debtor is a trust, must be read in conjunction with T.C.A. §66-2-201 and 203 and relevant case law. The section relied upon by the Bank merely vests title to land held by a religious denomination in its board of trustees. At the same time, Section 66-2-201 provides that "a church, whether incorporated or not, may take and hold any amount of acreage at one place for the purpose of public worship or for a parsonage, or for a burial ground." (Emphasis added.) More importantly, case law interpreting this statute establishes that it "confers a legal existence and entity upon unincorporated religious associations making them quasi-corporations with limited capacity and powers." Sales v. Southern Trust Co., 182 Tenn. 270, 185 S.W. 2d 623, 626 (1945). Further, Section 66-2-203 grants church officers the capacity to sell and convey land to purchasers "in as full and ample a manner as if said officers held the same as a corporation, and had conveyed it by deed under the corporate name." From this discussion, it may be concluded that under state law this debtor would not be classified as a mere non-business trust.

The Court's analysis of Chapter 11 eligibility under federal law begins with section 109(d) of the Bankruptcy Code which provides:

(d) only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title.

Subsection (b) of Section 109 pertains to chapter 7 eligibility and sets forth that:

(b) A person may be a debtor under chapter 7 of this title only if such person is not -

- (1) a railroad;
- (2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, credit union or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. §1813(h)); or
- (3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, homestead association, or credit union engaged in such business in the United States . . .

Finally, subsection (a) of Section 109 requires that a debtor be a "person" within the meaning of the bankruptcy laws "that resides, or has a domicile, a place of business, or property in the United States" or is a municipality.

The debtor in this instance clearly meets the Section 109(a) requirement that it have "property in the United States." However, it must also qualify for relief pursuant to Section 109(b). Given that Section 109(b) is an exclusionary statute, it is subject to application of the "general rule of statutory construction that the enumeration of specific exclusions from the operation of a statute is an indication that the statute should apply to all cases not specifically excluded." (citations omitted.)

In re Colorado Ind. Bank of Ft. Collins, supra at 739. As such, the list of entities to be excluded from bankruptcy court jurisdiction under Section 109(b) is "deemed to be exhaustive." Id. Inasmuch as the debtor here is not among the entities excluded from eligibility by Section 109(b), it qualifies for relief thereunder. Thus, the question becomes whether this debtor is a "person" under bankruptcy law.

Section 101(35) of the Bankruptcy Code defines "person" to include "individual, partnership, and corporation, but does not include governmental unit . . ." Neither "individual" nor "partnership" is defined in the Code; however, "corporation" is defined at Section 101(8) as follows:

(8) "corporation" -

(A) includes -

- (i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;
- (ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;
- (iii) joint-stock company;
- (iv) unincorporated company or association; or
- (v) business trust; but

(B) does not include limited partnership . . . "

As discussed above, this debtor is described on its statement of financial affairs as a non-profit, independent church with a congregation ranging from 150 to 350 members. The debtor is not incorporated nor is it a general or limited partnership or a joint-stock company. It is not a trust that is engaged in commercial activity for profit or business. It might be described as an association having a power or privilege that a private corporation possesses in that it has the power to hold and convey land through its officers or board of trustees pursuant to state law. However, it seems most likely that if the debtor is to qualify as a "corporation" and consequently, a "person" eligible for chapter 11 relief, it will do so as an "unincorporated company or association."

This phrase is not defined in the Bankruptcy Code or its legislative history; however, the latter provides that "[u]nincorporated association is intended . . . to include . . . bodies that come under that phrase as used under current law." H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 309 (1977), reprinted at Appx. 2 Collier on Bankruptcy (15th Ed.) §II. Assuming that Black's Law

Dictionary (5th Ed.) provides an accurate representation of "current law," its definition of "unincorporated association" as a "voluntary group of persons, without a charter, formed by mutual consent for [the] purpose of promoting common enterprise or prosecuting common objective" is adopted for purposes of this proceeding.

The debtor easily meets the elements of this definition for it is comprised of a voluntary group of persons who by mutual consent promote religious worship and the activities related thereto. As such, this Court concludes that the debtor, Tree of Life M.B. Church, is an unincorporated association eligible for chapter 11 relief pursuant to sections 109(a), (b), and (d); 101(8) and 101(35) of the Bankruptcy Code.

From the above findings and conclusions and the case record as a whole, it is HEREBY ORDERED that the Motion to Dismiss the debtor's Chapter 11 petition filed by Tri State Bank of Memphis is denied.

SO ORDERED THIS 21st day of November, 1988.

William Houston Brown
United States Bankruptcy Judge

cc:

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