

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:) CASE NO. 04-35198(LMW)
)
MARIA CURA, TRUSTEE OF) CHAPTER 11
ROBERT D. CURA SPRAY TRUST,)
) DOC. I.D. NOS. 28, 36
DEBTOR.)

APPEARANCES

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D. Cura Spray Trust

**BRIEF MEMORANDUM AND ORDER
DISMISSING CHAPTER 11 CASE OF INELIGIBLE DEBTOR**

Lorraine Murphy Weil, United States Bankruptcy Judge

WHEREAS, the above-referenced trust (the “Trust”) commenced this chapter 11 case by a petition filed on November 9, 2004;

WHEREAS, on August 4, 2005 Cadle Scrapyard of Connecticut, Inc. (“Cadle”), a secured creditor in this case, filed a Motion To Dismiss Bankruptcy Proceeding (Doc. I.D. No. 28, the “Motion”). The Motion alleges that the Trust is not a person eligible for relief under Bankruptcy Code §§ 101 and 109. The Trust disputes that contention (*see* Doc. I.D. No. 36);

WHEREAS, the Motion came on for a hearing (the “Hearing”) on April 18, 2006. At the Hearing Maria Cura, trustee of the Trust, testified and Cadle placed documentary evidence into the record;

WHEREAS, at the conclusion of the Hearing the court took the matter under advisement subject to post-trial briefing. Briefing is complete and the matter is ripe for decision;

WHEREAS, the Trust bears the burden of proving its eligibility for bankruptcy relief. *See In re Gurney’s Inn Corp. Liquidating Trust*, 215 B.R. 659, 660 (Bankr. E.D.N.Y. 1997);

WHEREAS, to be eligible for bankruptcy relief a trust must be a “business trust.” 11 U.S.C. §§ 101(9)(A)(v), 101(41), 109(a). If a trust is a mere “family trust,” as opposed to a business trust, it is ineligible for bankruptcy relief. *Brady-Morris v. Schilling (In re Kenneth Allen Knight Trust)*, 303 F.3d 671, 673 (6th Cir. 2002);

WHEREAS,

a basic distinction between a business trust and other trusts is that business trusts are created for the purpose of carrying on some kind of business, whereas the purpose of a non-business trust is to protect and preserve the res. Furthermore, while a trust must engage in business-like activities to qualify as a business trust, such activity, without more, does not necessarily demonstrate that a trust is a business trust. . . . Ultimately, each decision is based on a very fact-specific analysis of the trust at issue.

In re Secured Equipment Trust of Eastern Air Lines, Inc., 38 F.3d 86, 89 (2d Cir. 1994) (citations omitted). The “inquiry must focus on the trust documents and the totality of the circumstances, not solely on whether the trust engages in a business” *Id.* at 90-91 (internal quotation marks and citation omitted);

WHEREAS, a copy of the Trust’s indenture (*i.e.*, the Robert D. Cura Spray Trust Indenture) (the “Indenture”) is in the record as Movant’s Exhibit 1. The Trust is an irrevocable trust, settled

by Peter B. Cura for the benefit of his son, Robert D. Cura, and Robert D. Cura's lineal descendants. (See Indenture.) The Trust res is certain real property in Watertown, Connecticut. (See Indenture (Schedule A).) Cadle holds a mortgage on that property. It is alleged that the Trust engages in business by renting out the subject property;

WHEREAS, the court has reviewed the Indenture and is not persuaded that the Trust is other than a family trust created to preserve the trust res for the benefit of the Trust beneficiaries. There is no persuasive evidence that any business transacted by the Trust is other than incidental to the foregoing purpose;

WHEREAS, for the foregoing reasons the court concludes that the Trust is ineligible for bankruptcy relief and this case must be dismissed;

NOW, THEREFORE, it is hereby **ORDERED** that the Objection is overruled and this case shall be, and hereby is, dismissed. A conforming order shall issue.

Dated: September 15, 2006

BY THE COURT


Lorraine Murphy Weil
United States Bankruptcy Judge