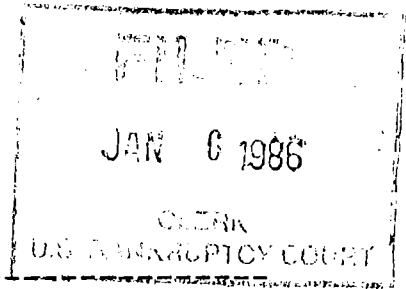


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

SCENIC CONCEPTS, INC.,  
a/k/a Northwestern Photo  
Company, Paramount Photo  
Shop,

LF11-84-02279

Debtor.

OPINION AND ORDER APPOINTING TRUSTEE

Creditor Norwest Bank of La Crosse has moved this court for an order appointing a responsible officer or, in the alternative, a trustee. A hearing on this motion was begun on December 6, 1985. The hearing was adjourned for the submission of briefs on the issue of whether the existence of a voting trust agreement requiring unanimous decision by the voting trustees on any corporate expenditure over \$5,000 provides a basis for appointment of a trustee pursuant to 11 U.S.C. § 1104 as a matter of law.

Debtor Scenic Concepts, Inc., operates a business primarily involved with photographic film sales and development. In March, 1982, debtor corporation was formed by the merger of Paramount Photo Shop, Inc., with Scenic Concepts, Inc. Dennis Russell (from Scenic Concepts), Richard Masrud, Patrick McGuire and Jeffrey McGuire (from Paramount Photo) are the shareholders and voting trustees of the merged corporation.

Sec. 1104, in relevant part, provides:

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest, and after notice and a hearing, the court shall order the appointment of a trustee--

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

Thus, the court shall order a trustee appointed either for cause or if such appointment is in the interests of creditors, any equity security holders and other interests of the estate.

The court is convinced that the management situation of Scenic Concepts mandates the appointment of a trustee. The evidence in opposition to appointment of a trustee which has been proffered through the affidavit of Richard Masrud, or any similar evidence which could be introduced, cannot alter the fact that this debtor has no chance of engaging in a successful reorganization as it is presently managed.

This reorganization has been pending since 1984 yet no reorganization plan has been forthcoming from the debtor. Even more telling is the fact that the two management groups have submitted separate plans. Dennis Russell has submitted one plan. The disclosure statement connected with that plan states that the board of directors has been unable to reach agreement on a plan of reorganization. The inability to reach agreement on the funda-

mental and essential issue of a plan is further demonstrated by the plan of reorganization submitted by the three other directors. This plan, submitted in the name of New Era Photo, Inc., proposes that New Era will acquire all property of the debtor upon confirmation. The proposed management of New Era does not include Dennis Russell.

These opposing plans by debtor's management make it clear that there is no realistic possibility that the present management will be able to agree on and submit a plan of reorganization. Whether this is due to the voting trust agreement or simply animosity between the management factions is irrelevant. What is relevant is that this debtor in the over one year period it has been in reorganization has been unable to perform the basic, essential task of submitting a plan of reorganization. This itself, without consideration of evidence offered by any party, mandates appointment of a trustee.

This court is aware that appointment of a trustee is an extraordinary remedy which may impose additional costs on a bankruptcy estate. However, the court is firmly of the opinion that it has no alternative. A successful reorganization by debtor would unarguably be in the best interests of creditors and the estate. It is clear that such a successful reorganization will not be possible under current management. Any added cost of a trustee will be more than offset by the greater possibility of a successful reorganization and greater efficiency in debtor

operations. Such greater efficiency will almost inevitably result from the removal of management friction and disagreement.

This court concludes that it is in the best interests of creditors and the debtor's estate to appoint a trustee. The court shall appoint Gerald Buccino, who has capably served as a consultant to debtor, as trustee.

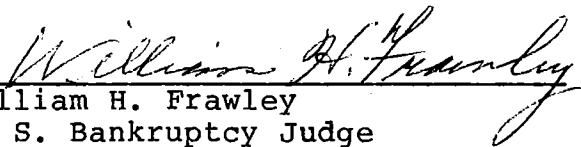
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT Gerald Buccino is appointed as trustee in this proceeding pursuant to 11 U.S.C. § 1104(a)(2), and shall obtain a bond in the amount of \$400,000.

Dated: January 6, 1986.

BY THE COURT:

  
William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney David T. Bennett  
Attorney Peter F. Herrell  
Attorney Gerard O'Flaherty  
Attorney Robert Burg

Attorney Douglas J. Lipke  
Attorney John P. Stuber  
Attorney Howard B. Prossnitz  
Attorney Lawrence J. Kaiser

ca 1/8/86