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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE FRUEHAUF TRAILER,)	Case No. CV 10-02312 DDP
Debtors,)	
CHRISS STREET,)	ORDER AFFIRMING THE DECISION OF
)	THE BANKRUPTCY COURT
Appellant,)	
)	re Bankruptcy Case
v.)	96-1563-96-152,
)	adversary number
DANIEL HARROW, as Successor)	08-1865-RN.
Trustee of the End of the)	
Road Trust and American)	
Trailer Industries, Inc.,)	
)	
Appellees.)	
_____)	

This matter comes before the court on appeal from the bankruptcy court's judgment in favor of Plaintiffs-Appellees. After reviewing the materials submitted by both parties and considering the arguments therein, the court AFFIRMS the decision of the bankruptcy court and adopts the following order.

cc: US Bankruptcy Court

cc: US Trustee's Office

1 **I. Background**

2 Appellant in this matter is Chriss Street ("Street"), who
3 formerly served as the trustee to the "End of the Road Trust."
4 (Appellant's Brief 2.) Appellees in this matter include Daniel
5 Harrow ("Harrow"), the new trustee for End of the Road Trust, and
6 American Trailer Industries, Inc ("ATII"). Street appeals from a
7 bankruptcy court's judgment against him for over \$7 million
8 dollars. (Appellant's Excerpts of Record ("ER") 530-32.)

9 The chapter 11 bankruptcy of Fruehauf Trailer Corporation
10 resulted in a debtors's amended plan of joint organization (the
11 "Plan") that was confirmed on September 17, 1998, pursuant to an
12 order. (ER 536:1-4.) The Plan called for a Delaware liquidation
13 trust, through which Street and the Debtors entered into a
14 Liquidating Trust Agreement. (Appellant's Brief 6.) The
15 Liquidating Trust Agreement created the End of the Road Trust. (EOR
16 536:4-9.)

17 Notably, the Liquidating Trust Agreement prohibited the
18 Trustee, i.e. Street, from "engag[ing] in any trade or business,
19 including, without limitation, the purchase or any asset or
20 property, (other than such assets or property as are necessary to
21 preserve, conserve and protect . . . [the End of the Road Trust])."
22 (ER 538:24-26.) The Liquidating Trust Agreement also barred sizable
23 financial transactions without first obtaining the Trust Advisory
24 Committee's ("TAC") prior approval. (ER 539:3-15.)

25 Section 8.3.1 of the Trust Agreement expressly exculpated the
26 End of the Road Trust's Trustee of any liability from his acts or
27 omissions, unless those acts or omissions constituted gross
28 negligence or willful misconduct:

1 No provision of the Agreement shall be
2 construed to impart any liability upon the
3 Trustee unless it shall be proved in a court
4 of competent jurisdiction that the Trustee's
5 actions or omissions constituted gross
6 negligence or willful misconduct in the
7 exercise of any right, power or duty vested in
8 him under this Agreement.

(Appellant's Brief 7 (emphasis added).)

6 Section 8.3.3 also concerned liability of the Trustee under
7 the Agreement:

8 Within the limitations and restrictions
9 expressed and imposed herein, the Trustee may
10 act freely with respect to the exercise of any
11 or all of the rights, powers and authority
12 conferred hereby in all matters concerning the
13 Trust Estate after forming his best judgment
14 based upon the circumstances without the
15 necessity of obtaining the consent or
16 permission or authorization of the Beneficial
17 Interestholders or of the Court, any other
18 court, official, or officer. . . . Further,
19 the Trustee shall not be liable for any act or
20 omission in connection with the administration
21 of this Liquidating Trust, or the exercise of
22 any right, power, or authority conferred upon
23 him hereunder, unless it shall be proved that
24 such Trustee was grossly negligent or acted in
25 a manner which constituted willful misconduct.

(Appellant's Brief 8 (emphasis added).)

20 Additionally, Section 8.5.1 provided the Plan's trustee with
21 indemnification for any legal expenses incurred in connection with
22 the End of the Road Trust, subject to the same exception for gross
23 negligence or willful misconduct. (Appellant's Brief 9.)

24 Street served as trustee of the End of the Road Trust between
25 November 19, 1999 and August 1, 2005. (ER 5:3-5.) During that
26 time, Street acted as sole director and chief executive of Frudemex
27 - the most valuable asset of the End of the Road Trust. (ER 537:14-
28 18.) After a series of name changes, Frudemex became known as

1 American Trailer Industries, Inc ("ATII"). (ER 537:25-28.) In
2 November 1999, Street, acting as trustee, purchased American
3 Trailer Manufacturing ("ATM"), a bankrupt trailer manufacturer, for
4 over \$2 million. (ER 539:17-19, 540:5-7.) This purchase was not
5 approved by the TAC. (ER 540:5-8.) ATII paid over \$1.1 million of
6 ATM's expenses. (ER 540:17-19.) These business transactions were
7 not authorized by the TAC or any court. (ER 540:14-16.) In a
8 series of similar unauthorized transactions, Street acquired Dorsey
9 Trailer Corporation, (ER 540:20-541:1), before eventually incurring
10 further loss to the End of the Road Trust of over \$3.3 million. (ER
11 542:3-5.)

12 In February 2007, Appellees filed suit in the U.S. Bankruptcy
13 Court for the District of Delaware. In October 2008, the matter
14 was transferred to the U.S. Bankruptcy Court for the Central
15 District of California. During a two-day bench trial, Tasha Dolan,
16 former Comptroller of the End of the Road Trust and former
17 President and CFO of Dorsey, testified in Street's defense. Dolan
18 testified that all of these transactions were geared towards
19 building a much larger company, with the intent to tender a public
20 offering. (ER 201:10-202:12.)

21 The bankruptcy court found Street was liable for over \$3
22 million in damages to the trust for his acquisition of and business
23 with ATM. (ER 531 n.2.) The bankruptcy court also ordered Street
24 to repay monies received from "excess salary compensation," as well
25 as from reimbursement of personal expenses totaling almost
26 \$500,000. (Id.) In total, the bankruptcy court calculated the
27 loses to the End of the Road Trust due to Street's actions to
28 amount to over \$7 million. (ER 532.) The court further found that

1 Street "willfully engaged in various acts of self-dealing and
2 breach of duty . . . amount[ing] to gross negligence and willful
3 misconduct." (ER 560:25-561:1.) As a result of this conduct, the
4 bankruptcy court found that the Liquidation Trust Agreement barred
5 indemnification. (ER 560:14-27.)

6 Street appealed the portions of that judgement stemming from
7 liability from (1) ATM, (2) Dorsey Trailer Corporation, (3) excess
8 salary payments, and (4) reimbursement of personal expenses.
9 (Appellant's Brief 16.)

10 On appeal, Street argues that the bankruptcy court's finding
11 that Street's actions as trustee amounted to gross negligence or
12 willful misconduct is clearly erroneous. Accordingly, Street
13 argues that the Liquidation Trust Agreement exculpated (or
14 indemnified) his actions.

15 **II. Legal Standard**

16 Federal district courts have jurisdiction to review appeals
17 from final orders and judgments of bankruptcy courts. 28 U.S.C. §
18 158(a). In determining an appeal from the bankruptcy court,
19 findings of fact are reviewed under the clearly erroneous standard,
20 and conclusions of law are reviewed de novo. In re Salazar, 430
21 F.3d 992, 994 (9th Cir. 2005); In re Tucson Estates, Inc., 912 F.2d
22 1162, 1166 (9th Cir. 1990). A determination of negligence is
23 "generally recognized as a mixed question of law and fact." United
24 States v. Babbs, 483 F.2d 308, 311 (9th Cir. 1973). Yet, based
25 upon McAllister v. United States, 348 U.S. 19, 20-21 (1954), the
26 appellate review of a negligence finding is "governed by the
27 clearly erroneous standard." Miller v. United States, 587 F.2d
28 991, 994 (9th Cir. 1978); Armstrong v. United States, 756 F.2d

1 1407, 1409 (9th Cir. 1985). For a district court to conclude that
2 a bankruptcy court's findings were clearly erroneous, it must be
3 left with a "definite and firm conviction that a mistake has been
4 committed." United States v. United States Gypsum Co., 333 U.S.
5 364, 395 (1948). This court reviews questions of law de novo. See
6 Laws v. Sony Music Entertainment, Inc., 448 F.3d 1134, 1137 (9th
7 Cir. 2006).

8 **III. Discussion**

9 The parties argue over whether the Delaware Statutory Trust
10 Act or Delaware common law controls. Street argues that pursuant
11 to the Delaware Statutory Trust Act, DEL. CODE 12 § 3801, et seq.,
12 the Liquidation Trust Agreement properly exculpated (or
13 indemnified) him for any actions he took as trustee of the End of
14 the Road Trust. Appellees contend that the Delaware Statutory Act
15 is inapplicable. Instead, Appellees maintain that Delaware common
16 law applies because a certificate of trust, as required under §
17 3801 for the Delaware Statutory Trust Act to apply, was never
18 filed. The court, however, need not reach the issue of which body
19 of law governs.

20 Under either the Delaware Statutory Trust Act or Delaware
21 common law a trust agreement cannot exculpate a trustee's gross
22 negligence or willful misconduct. See McNeil v. McNeil, 798 A.2d
23 503, 509 (Del. 2002); RESTATEMENT (SECOND) OF TRUSTS § 222. Here, the
24 bankruptcy court, in examination of Street's acts and omissions,
25 found gross negligence and willful misconduct in violation of his
26 duties delineated in the End of the Road Trust and his duty of
27 loyalty as trustee. (ER 551:14-17, 560:27-561:2.) Because the court
28 affirms the Bankruptcy court's finding of willful misconduct and

1 gross negligence, the court need not reach the issue of whether
2 Delaware common law or the Delaware Statutory Trust Act governs.

3 Street concedes that he is liable for any acts of gross
4 negligence or willful misconduct during his tenure as the End of
5 the Road Trust's trustee. (Appellant's Brief 24.) He contends,
6 however, that at most his behavior constituted "business conduct
7 that unfortunately didn't produce the results that [he] hoped for."
8 (Appellant's Brief 27.)

9 This court reviews the Bankruptcy court's determination that
10 Street was grossly negligent and engaged in willful misconduct for
11 clear error. In its Memorandum of Decision After Trial
12 ("Memorandum"), the bankruptcy court first explained the express
13 limitations of the Liquidation Trust Agreement, which included a
14 restriction prohibiting the Trustee from "enter[ing] into or
15 engag[ing] in any trade or business, including, without limitation,
16 the purchase or any asset or property, (other than such assets or
17 property as are necessary to preserve, conserve and protect [the
18 Trust]. . . . (ER 538:24-26.) The court further acknowledged that
19 the Liquidation Trust Agreement barred certain financial
20 transactions without first obtaining the TAC's prior approval. (ER
21 539:3-15.)

22 The court went on to review in detail what it described
23 broadly as a case in which a "fiduciary lost sight of his mandate
24 to liquidate trust assets." (ER 536:12-15.) In particular, the
25 court set forth in detail the monetary losses that the End of the
26 Road Trust sustained as a result of Street's activities relating
27 to: (1) ATM, (2) Dorsey Trailer Corporation, (3) excess salary
28 payments, and (4) reimbursement of personal expenses. (ER 539:17-

1 551:9.) Ultimately, the court found Street had been grossly
2 negligent when he acted in direct violation of his stated mandate,
3 namely to liquidate the trust's assets. Indeed, Street ignored the
4 Liquidation Trust Agreement's express prohibitions by purchasing
5 and attempting to operate a large business for seven years instead
6 of, as the End of the Road Trust stipulated, liquidating assets.
7 Street's actions as Trustee resulted in losses of "significant sums
8 of money otherwise available for its beneficiaries." (ER 536:16-
9 18.) The bankruptcy court's findings are reasoned and supported.
10 The court points out, for example, that Street purchased and
11 operated bankrupt companies with trust funds that, ultimately,
12 yielded no investment return. Based on the bankruptcy court's
13 reasoned and detailed analysis, this court is not left with a
14 "definite and firm conviction that a mistake has been committed. "
15 U.S. Gypsum Co., 333 U.S. at 395. Therefore, the bankruptcy
16 court's finding that Street was grossly negligent in his management
17 of the End of the Road Trust is not clearly erroneous, and this
18 court affirms that finding.

19 Turning to the trustee's duty of loyalty, the bankruptcy court
20 again examined Street's actions in connection with (1) ATM, (2)
21 Dorsey, (3) excess salary payments, and (4) reimbursement of
22 personal expenses. (ER 551:23-559:10.) In support of the court's
23 conclusion that Street breached his common law duty of loyalty
24 under DEL. CODE 12 § 3581, the court found it significant that
25 Street acquired assets that ultimately lost money, while also
26 enriching himself at the expense of the trust. (ER 555:5-15). The
27 court also considered Street's failure to seek the requisite
28 permission for his business decisions, as well as his failure to

1 preserve records and potential legal claims. (ER 557:9-18; 558:19-
2 23.)

3 Street contends that the bankruptcy court "scrutinized" his
4 decisions and actions solely based upon their outcomes, which
5 cannot "justify millions of dollars in liability against him."
6 (Appellant's Brief 27-28). Moreover, he argues that the only
7 evidence providing a factual foundation for the court's conclusions
8 rests on a "brief comment during the testimony of Tasha Dolan,
9 former Comptroller of End of the Road Trust and former President
10 and CFO of Dorsey." (Appellant's Brief 26.) This evidence, Street
11 argues, is "mere[] speculation." (Id.) Street further contends
12 that the bankruptcy court erred in so far as the court found no
13 motive for Street's actions to support its finding of misconduct.
14 (Id.) The court is not persuaded.

15 Clear error is a high bar. To support a determination of
16 gross negligence or willful misconduct, the bankruptcy court had to
17 find that Street was "reckless[ly] indifferen[t] or [that he]
18 deliberate[ly] disregard[ed]. . . [a] trustee's fiduciary duty."
19 In re Continental Coin Corp., 380 B.R. 1, 4 (Bankr. C.D. Cal 2007).
20 Likewise, Black's Law Dictionary defines "gross negligence" as "[a]
21 conscious, voluntary act or omission in reckless disregard of a
22 legal duty [which imposes] consequences [upon] another party."
23 Black's Law Dictionary 1134 (9th ed. 2009). The bankruptcy court's
24 failure to offer a motive for Street's actions is irrelevant, so
25 long as he intentionally or recklessly disregarded his duties as a
26 trustee.

27 As discussed above, the bankruptcy court supported its finding
28 with careful consideration of the record and detailed findings.

1 Nothing Street has presented demonstrates that the bankruptcy
2 courts findings of gross negligence and willful misconduct - in
3 relation to Street's unauthorized business transactions,
4 overpayment of salary, and reimbursement of personal expenses -
5 were clearly erroneous. The court, therefore, affirms the
6 bankruptcy court.

7 Because the court concludes that the bankruptcy court's
8 findings were not clearly erroneous, it does not address as moot
9 Street's argument that the Liquidation Trust Agreement's
10 exculpatory clause shields him from liability for negligence, or
11 that the Trust Agreement's indemnification clause obligates
12 reimbursement for his legal fees or payment of other monies.
13 Street's actions were not merely negligent, but rather, grossly
14 negligent and, therefore, the exculpatory clause and the
15 indemnification clause - which relate only to mere negligence - do
16 not apply.

17 **IV. Conclusion**

18 For the foregoing reasons, the court AFFIRMS the decision of
19 the bankruptcy court.

20

21 IT IS SO ORDERED.

22

23 Dated: May 23, 2011

24



DEAN D. PREGERSON

25

United States District Judge

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