

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

TRI-R ANGUS, INC., a Nebraska corporation,

Plaintiff,

vs.

JON L. NEIMAN TRUST, JON R. NEIMAN, TRUSTEE, TROY NEIMAN, TRUSTEE, AND CAROL JEAN LEWIS, TRUSTEE, AND TRUST UNIT MANAGERS OF JON L. NEIMAN TRUST AND DUANE GILL AND NoREENE GILL, HUSBAND AND WIFE,

Defendants.

Case No. 10738

ORDER ON MOTION TO CONSOLIDATE

DATE OF HEARING: July 16, 1999.

DATE OF DECISION: July 22, 1999.

APPEARANCES:

For plaintiff: Rodney J. Palmer.

For defendants:

Jon R. Neiman: no appearance.

All others: K.C. Engdahl.

SUBJECT OF HEARING: motion of all defendants except Jon R. Neiman to consolidate.

FINDINGS: The court finds that:

1. On July, 16, 1999, various motions of defendants (except defendant Jon R. Neiman) were heard and some were overruled.

a. To the extent that the defendants' motion for consolidation sought consolidation of this action with some other action or actions now pending in the District Court of Grant County, Nebraska, the motion was denied without prejudice to any action that might hereafter be taken in the District Court of Grant County, Nebraska.

b. To the extent that the motion for consolidation sought transfer of this action to the District Court of Grant County, Nebraska, under the authority of NEB. REV. STAT. § 25-410 "in the interest of justice," the court granted the parties, including the plaintiff, time to submit supplemental written

argument upon such matter, and took the matter under advisement.

2. The court has now received the supplemental written argument of the plaintiff. The court has also been advised of the filing of a written objection to transfer by defendant Jon R. Neiman. The court has carefully considered the matter.

3. In the interests of the prompt and efficient administration of justice, the court concludes that the matter should be transferred to the District Court of Grant County, Nebraska. The parties are substantially the same. Although the defendants Gill are not parties to the Grant County litigation, they are represented by the same counsel as other parties to that litigation and their interests run with such other parties. The issues in this litigation are interrelated and interwoven with the issues in the Grant County litigation to the extent that substantial issues regarding collateral estoppel may best be resolved by that court. It appears that a multiplicity of litigation may be avoided by the transfer.

4. Such transfer is fairly within the scope of the relief sought by the defendants' motion to consolidate. The scope, purpose, and requested relief of a pleading is not controlled by the caption or title placed thereon. Rather, the content of the pleading controls. The relief granted is not made on the court's own motion, but constitutes partial relief on the defendants' motion. To such extent, the motion should be granted.

ORDER: The court, being advised in the premises, finds and orders:

1. To the extent that the defendants' (except Jon R. Neiman) motion for consolidation seeks transfer of this action to the District Court of Grant County, Nebraska, under the authority of NEB. REV. STAT. § 25-410 "in the interest of justice," the motion is granted and the cause is ordered transferred to the District Court of Grant County, Nebraska.

2. The Clerk of the District Court of Cherry County, Nebraska, is ordered and directed to:

a. Make photocopies of the complete content of the file (including this order when filed) and the original trial docket sheet, and retain the same in the files of this court in place of the original file.

b. Transmit: (1) the original file (including this order when filed), (2) the original trial docket sheet, (3) a computer printout of the trial docket entries made on the computer system subsequent to commencement of use of the Justice computer system, (4) a photocopy of the appearance docket

page(s) pertaining to this case, and, (5) a computer printout of the appearance docket entries made on the computer system subsequent to commencement of use of the Justice computer system, to the Clerk of the District Court of Grant County, Nebraska, by certified United States Mail, for filing and docketing in the manner provided by law.

c. Mail a copy of this order to the Honorable Brian C. Silverman, District Judge, 515 Box Butte Ave., Alliance, NE 69301-3374.

Dated: July 22, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 19____ by _____.
- : Comply with paragraph 2 of Order.
Done on _____, 19____ by _____.
- : Note the decision on the trial docket as: 7/22/99 Signed "Order on Motion to Consolidate" entered granting motion to the extent the same seeks transfer of action to District Court of Grant County, Nebraska.
Done on _____, 19____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge