

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:05-bk-4828-ABB
Chapter 7

JOAN LESLIE YOUNGBLOOD

Debtor.

**ORDER SUSTAINING OBJECTION TO
EXEMPTION**

This matter came on for hearing on October 3, 2005 on the Objection to Exemption and Motion for Turnover of Gene T. Chambers, Trustee (Doc. No. 32). The issue is whether the debtor as beneficiary of a life insurance policy may exempt the proceeds of the policy in her bankruptcy case. After reviewing the pleadings and considering the parties' arguments and the applicable law, this court finds the proceeds of the life insurance policy are property of the estate and not exempt from the creditors of the debtor who is beneficiary of the policy.

JURISDICTION

This court has jurisdiction of this matter pursuant to 28 U.S.C. §§157 and 1334(b). This is a core proceeding as to which the court is authorized to hear and determine all matters regarding this case in accordance with 28 U.S.C. § 157(b)(2)(B).

FINDINGS OF FACT

Adrian Youngblood Jr. and his wife obtained a life insurance policy to cover the mortgage on their new home in 1981 in the event of his death. The policy was purchased through membership in United Services Automobile Association, an insurance company formed by military officers marketing products to the military community. The policy is not a benefit of the United States Department of Veterans Affairs. The insurance policy was intended to pay off the mortgage of any home they might own in the future, since he would be relocating during his military career. The mortgage company of their first home was listed as beneficiary of the policy.

The Youngbloods relocated to a new home and changed the beneficiary to designate Joan Youngblood. Their original intent remained, to pay off the mortgage in the event of Adrian Youngblood's death. The change of beneficiary was made to avoid continually changing the beneficiary with the sale and purchase of future homes during military life.

Adrian Youngblood, Jr. died on March 22, 2005 leaving the proceeds of a USA Life Insurance Company policy to his beneficiary and wife, Joan Leslie Youngblood, the debtor. Consistent with the Youngbloods' intent to pay off the mortgage, Joan Youngblood requested the insurance company to pay the mortgage company directly. Joan Youngblood filed for relief under Chapter 7 of the Bankruptcy Code on April 29, 2005. She amended her Schedule C to claim "Mortgage Term Insurance" valued at \$37,744.00 exempt pursuant to Fla. Stat. § 222.13. The Trustee objected to the exemption and moved for turnover of the proceeds. Although it is clear the Youngbloods intended the proceeds pay the mortgage, the proceeds of this policy are property of the estate.

CONCLUSIONS OF LAW

A bankruptcy estate consists of all legal and equitable interests of a debtor at the time of the filing of the bankruptcy except as otherwise provided in Section 541. In certain instances, this interest is extended for 180 days after the filing of the bankruptcy by Section 541 (a)(5) which addresses a debtor's acquisition of proceeds as a beneficiary of a life insurance policy. Section 363 (b)(1) permits a trustee to use, sell or lease property of the estate. Section 542 requires an entity in possession or control of property not otherwise exempt to deliver and account for that property. A Chapter 7 trustee obtains the right to determine how insurance proceeds received by a debtor beneficiary will be distributed. *See In Re Williams*, 222 B.R. 662 (Bankr.S.D.Fla. 1998).

Property of a Chapter 13 estate includes property specified in Section 541 and all property acquired after commencement of the case but before the case is concluded. 11 U.S.C. § 1306. A debtor in Chapter 13 is given, "exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(1)..." 11 U.S.C. § 1303. Chapter 7 trustees govern the destiny of a beneficiary's life insurance proceeds; in a Chapter 13 the debtor assumes those rights, powers and privileges. The debtor's plan of reorganization as required by Section 1321 sets forth a roadmap of the manner in which those proceeds shall be distributed. *See* 11 U.S.C. § 1322.

The debtor has the burden to establish the insurance proceeds are exempt from recovery by the Chapter 7 trustee pursuant to applicable Florida or federal law. Debtor maintains several arguments in her brief entitled "Argument in Favor of the Debtor Using the Proceeds of the Mortgage Life Insurance Policy to Pay the Mortgage" (Doc. No. 42). First, the debtor argues that Fla. Stat. § 744.626 exempts benefits of veterans from claims of creditors. It specifically exempts "benefits from the United States Department of Veterans Affairs or the Social Security

Administration to or for the benefit of a disabled veteran or the veteran's surviving spouse or dependents..." The policy at issue is available to military through membership in United Services Automobile Association, an insurance company formed by military officers marketing its products to the military community. The policy is not a benefit of the United States Department of Veterans Affairs, rendering Fla. Stat. § 744.626 inapplicable.

Debtor argues that 11 U.S.C. § 522(d)(1)(B) exempts the debtor's right to receive a veterans' benefit. Section 522 exemptions are applicable only if a state does not opt out of the federal exemptions. Pursuant to Fla. Stat. § 222.20 "residents of this state shall not be entitled to the federal exemptions provided in s. 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. § 522(d))." Fla.Stat. § 222.20. As Florida has opted out of the federal exemptions of Section 522 of the Bankruptcy Code, and this policy is not a veterans' benefit, debtor's reliance on Section 522 (d)(10)(B) is misguided.

The spendthrift clause cited by the debtor within the policy stating "[t]o the extent permitted by law, proceeds payable under this policy shall not be subject to claims of creditors nor legal process" is not persuasive in the determination of this issue. Federal bankruptcy law and Florida law dictate any claims of a third party to the proceeds of this policy.

Fla. Stat. § 222.13 provides:

1) Whenever any person residing in the state shall die leaving insurance on his or her life, the said insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of creditors of the insured unless the insurance policy or a valid assignment thereof provides otherwise. Notwithstanding the foregoing, whenever the insurance, by designation or otherwise, is payable to the insured or his estate or to his executors, administrators, or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes and shall be administered in accordance with the probate laws of the state in like manner as other assets of the insured's estate.

Debtor relies on this statute to support the assertion the policy is intended for a specific class of creditor, a mortgagee, rather than a specific creditor. Debtor contends the creditors not in the class, non-mortgage creditors, are excluded from making a claim

as creditors of the decedent or of the debtor. The statute provides the insurance is exclusively to benefit "the person for whose use and benefit such insurance is designated in the policy." The person 'designated' in the policy is the debtor, listed as beneficiary. The statute's provision exempting claims from the "creditors of the insured" refers to the decedent who is not a debtor in this case. This statute was not intended to protect such proceeds from the claims of the beneficiary's own creditors. In re Zesbaugh, 190 B.R. 961 (Bankr.M.D.Fla.1995); In re Butcher, 62 B.R. 162 (Bankr.E.D.Tenn.1986).

The beneficiary of the insurance policy is the debtor, not a mortgage company, despite the clear intent of the Youngbloods. The insurance policy does not fall within the class of policies protected by Fla. Stat. § 222.13, and is not exempt from the creditors of the debtor. Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Trustee's Objection to Exemption is **SUSTAINED**; it is further

ORDERED, ADJUDGED and DECREED that the effective date of this Order is delayed 14 days; and it is further

ORDERED, ADJUDGED and DECREED that should the debtor remain in Chapter 7, the Trustee's Motion for Turnover is **GRANTED**, and the debtor and/or United Services Automobile Association (USAA) are directed to turn over the proceeds from Policy #6763 to Gene T. Chambers, Trustee.

DONE AND ORDERED in Orlando, Florida, this 2nd day of November, 2005.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge