

FRBP 1016
Death of Debtor

Milton Stewart, Case No. 601-66434-fra13

3/2/2004

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Unpublished

Debtor filed under Chapter 13 and the plan was confirmed on October 24, 2001. He made all monthly plan payments until his death on October 2, 2003. His children, who were his heirs at law, the Debtor having died intestate, proposed to continue administration by making the required plan payments for the remaining term of the plan. The trustee objected on the grounds that continued administration would not be in the best interest of the creditors.

FRBP 1016 states that in the event of the death of a Chapter 13 debtor, the case may be dismissed or, if further administration is in the best interest of the parties, the case may be continued as if the death had not occurred. The court determined that under the circumstances of this case, continued administration would be in the best interest of the parties. The personal representative in the state probate proceedings of the debtor would be substituted for the Debtor in the Chapter 13 case.

1 On the other hand, if the case is dismissed without a
2 discharge, the pre-petition claims would not be discharged, and all
3 would be chargeable against the Debtor's probate property. The
4 Trustee views this scenario to be more advantageous to the
5 creditors. However, the Debtor's heirs point out that, if continued
6 administration is not permitted, they will have no reason to
7 continue to service the estate's secured debt. If payments on these
8 loans do not continue, creditors will foreclose, leaving no equity
9 at all for unsecured creditors. It follows that unsecured creditors
10 are more likely to gain from continued administration than from
11 dismissal.

12 Other equities weigh heavily in favor of continued
13 administration. The Debtor could have filed under Chapter 7, with
14 the likely result of a smaller distribution to creditors. Instead,
15 he chose to proceed under Chapter 13, and complied with the plan in
16 every respect until his death. The Debtor's family should not be
17 deprived of the benefits of these efforts: to do so would
18 effectively penalize the debtor for having elected to reorganize.
19 See In re Bond, 36 B.R. 49, 51-52 (Bankr. E.D. N.C. 1984) (ordering
20 continued administration in order to allow hardship discharge.)

21 In order for administration to continue, someone must be
22 substituted for the Debtor. The logical person would be a personal
23 representative appointed by the State Court in the pending probate
24 proceeding. The probate proceeding should proceed to entry of a
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1 decree of distribution after the reorganization plan is completed
2 and an order entered discharging the debtor and closing the case.

3 The Court will authorize continued administration of this
4 case, on the following conditions:

5 1. A Personal Representative is appointed for the Debtor by
6 the Oregon Circuit Court. Once this appointment is effective, the
7 Personal Representative, in his or her capacity as such, shall be
8 substituted for the Debtor in proceedings before this Court. The
9 personal representative, in that capacity, shall fulfill all of the
10 duties of the debtor under the plan and Bankruptcy Code.

11 2. All past due payments payable to the Trustee are to be
12 paid not later than 14 days from the date of the order appointing
13 the personal representative.

14 3. An order is entered modifying the automatic stay to
15 permit initiation and continuance of the probate proceeding,
16 appointment of a personal representative, and authorizing entry of a
17 decree of distribution after closure of this bankruptcy case.

18 The foregoing constitutes the Court's findings of fact and
19 conclusions of law. Counsel for the Debtor shall submit an order
20 consistent with the foregoing, including an order modifying the
21 automatic stay to permit the probate proceeding to continue, as
22 described herein.

23 FRANK R. ALLEY, III
24 Bankruptcy Judge

25 cc: Hon. Lauren Holland
26 Mr. Gavin Armstrong
 Mr. Paul Garrick