FRBP 1016 Death of Debtor

Milton Stewart, Case No. 601-66434-fra13

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Unpublished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 <u>parties</u>, 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 2 3 4 5 6 7 8 UNITED STATES BANKRUPTCY COURT 9 FOR THE DISTRICT OF OREGON 10 In Re: Bankruptcy Case No. 01-66434-fra13 11 MILTON C. STEWART, MEMORANDUM OPINION 12 Debtor. 13 The heirs of the Debtor, now deceased, propose to finance 14 continued administration of this Chapter 13 case. After considering 15 the interests of the parties, the Court concludes that it is in their best interest to continue administration. 16 17 I. BACKGROUND Debtor filed a petition for relief under Chapter 13 of the 18 19 Code, and a plan of reorganization on August 23, 2001. The plan, 20 which was confirmed on October 24, 2001, provided for payments of 21 \$800 per month for 36 months, plus submission of income tax refunds. 22 The debt service on real property owned by the Debtor was to be paid 23 directly to the secured creditors. Unsecured claims were filed totaling \$146,441.27. 24 25 26

The Debtor made all monthly payments until his death on October 2, 2003. Not surprisingly, several payments were missed after the Debtor passed away. His children, who are his heirs at law (the Debtor died intestate) now propose to continue administration by making up the missing payments, and continuing with required payments for approximately 11 months, when the plan will be paid in full.

The Trustee objects, on the grounds that continued administration is not in the best interest of the creditors. The Trustee does not question the ability of the Debtor's survivors to fund and complete administration of the plan.

II. DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event of the death of a debtor reorganizing under Chapter 13, "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." [Emphasis added]

If allowed to continue administration, the Debtor's heirs will contribute, presumably in monthly installments, all funds necessary to pay all that is due under the plan. Thereafter an order would be entered discharging any remaining claims. The estate's real property, once released from the bankruptcy, would be subject to state court probate proceedings. In those proceedings the property would be subject only to claims arising post-petition.

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

Other equities weigh heavily in favor of continued administration. The Debtor could have filed under Chapter 7, with the likely result of a smaller distribution to creditors. Instead, he chose to proceed under Chapter 13, and complied with the plan in every respect until his death. The Debtor's family should not be deprived of the benefits of these efforts: to do so would effectively penalize the debtor for having elected to reorganize.

See In re Bond, 36 B.R. 49, 51-52 (Bankr. E.D. N.C. 1984) (ordering continued administration in order to allow hardship discharge.)

In order for administration to continue, someone must be substituted for the Debtor. The logical person would be a personal representative appointed by the State Court in the pending probate proceeding. The probate proceeding should proceed to entry of a

decree of distribution after the reorganization plan is completed and an order entered discharging the debtor and closing the case.

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

- 1. A Personal Representative is appointed for the Debtor by the Oregon Circuit Court. Once this appointment is effective, the Personal Representative, in his or her capacity as such, shall be substituted for the Debtor in proceedings before this Court. The personal representative, in that capacity, shall fulfill all of the duties of the debtor under the plan and Bankruptcy Code.
- 2. All past due payments payable to the Trustee are to be paid not later than 14 days from the date of the order appointing the personal representative.
- 3. An order is entered modifying the automatic stay to permit initiation and continuance of the probate proceeding, appointment of a personal representative, and authorizing entry of a decree of distribution after closure of this bankruptcy case.

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

FRANK R. ALLEY, III Bankruptcy Judge

cc: Hon. Lauren Holland Mr. Gavin Armstrong

Mr. Paul Garrick