

11 USC § 522(b)
11 USC § 522(1)
Bankr. R. 1016
ORS 23.240(1)

In re Tuley Case No. 389-30272-S7

4/3/91 DDS unpublished

A deceased debtor's personal representative may not claim a homestead exemption in different property than the debtor claimed when the case was originally filed.

It is unlikely that a personal representative has the authority to convert a case from chapter 13 to chapter 7 when the debtor dies during the chapter 13 case.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 389-30272-S7
CAROL P. TULEY,)
)
Debtor.) MEMORANDUM SUSTAINING
) TRUSTEE'S OBJECTION TO
) EXEMPTIONS

Carol Tuley filed this case in 1989 as a chapter 13. After she died in 1990, her personal representative filed a motion to convert this case to chapter 7. The motion was uncontested and routinely granted by the bankruptcy court a voluntary conversion by the debtor. The personal representative filed amended schedules and claimed a homestead exemption in a house in Lincoln City, a bank account and some personal items. The chapter 7 trustee objected to the exemptions claimed in the homestead and bank account on the basis that the exemptions are personal to the debtor and could not be claimed by the personal representative. The trustee's objection should be sustained.

The personal representative argues that Bankr. R. 1016 permits the bankruptcy to continue and that the homestead exemption survives despite the debtor's death. The representative's argument would be valid if this case had been filed as a chapter 7 and the

homestead properly claimed by the debtor at the beginning of the case. In re Peterson, 897 F.2d 935 (8th Cir. 1990). However, when the debtor filed the chapter 13, she claimed a homestead exemption in a different house in Portland. The Lincoln City property was a second home. During the administration of the chapter 13, the debtor sold the Portland property and moved to Lincoln City. She died several months later. The personal representative converted the case to chapter 7 and claimed the exemptions at issue.

It is questionable whether the personal representative had the authority to convert the case to chapter 7. Bankr. R. 1016 only contemplates the completion of a chapter 7 that was pending on the date of death or a hardship discharge in a pending chapter 13. A probate estate is not a person entitled to be a debtor under chapter 7. In re Goerg, 844 F.2d 1562, 1566 (11th Cir. 1988), cert. den. Parungao v. Goerg, 488 U.S. 1034 (1989), In re Burner, 109 Bankr. 216, 221 n.3 (Bankr. W.D. Tex. 1989).

No party in interest has filed a motion to rescind the order of conversion, or to revoke the discharge which was entered in this case on December 3, 1990, so I will rule on the claimed exemptions without deciding whether the case should have been converted. Without revoking the discharge it would be inequitable to dismiss this case pursuant to 11 U.S.C. §305, as the bankruptcy court did when a personal representative requested conversion from chapter 13 to chapter 7 in the case of In re Jarrett, 19 Bankr. 413 (Bankr. M.D.N.C. 1982). Dismissing the case without revoking the discharge

would result in a windfall to the heirs by discharging the debtor's obligations and then permitting the probate estate to administer the assets.

A personal representative is not entitled to claim exemptions for a debtor. Only an individual debtor may claim exemptions. 11 U.S.C. §522(b). The personal representative argues that a homestead exemption is effective in Oregon without the necessity of a claim thereof by the judgment debtor based on ORS 23.240(1). While a homestead may be exempt from execution based on that statute, it does not follow that a homestead is exempt from the bankruptcy estate unless the debtor claims the exemption. Only the debtor or a dependant may file a list of the property claimed exempt from property of the estate. 11 U.S.C. §522(1). It is the debtor's burden to claim exemptions within the time specified in Bankr. R. 4003 and 1007. The debtor's heirs are her adult children, and were not her dependants at the time of her death. To allow the claimed exemptions would not support the bankruptcy policy of providing a fresh start for the debtor, but would merely provide some property to the debtor's heirs.

The personal representative has no authority to claim exemptions in this case. The trustee's objection is sustained and a separate order will be entered.

DONAL D. SULLIVAN
Bankruptcy Judge

cc: Frank J. Dixon
John B. Franzwa
U. S. Trustee