UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
ROBERT J. & DIANE L. HAGEMAN,	)	CASE NO. BK86-615
	)	
DEBTORS	)	A88-69
	)	
DAVID C. NUTTLEMAN, Trustee,	)	
	)	
Plaintiff	)	CH. 7
	)	
vs.	)	
	)	
ROBERT J. & DIANE HAGEMAN and KOURTNEY K. & JUDD A. HAGEMAN,	)	
	)	
Defendants	)	

JOURNAL ENTRY

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion to Dismiss (Filing No. 12) and Objection to Motion to Dismiss (Filing No. 15) heard August 16, 1988.

APPEARANCES

Michael V. Smith, Attorney for plaintiff, P.O. Box 302, Gordon, NE 69343-0302

George Clough, Attorney for defendant, 108 E. Second St., North Platte, NE 69101

IT IS ORDERED:

The motion to dismiss is overruled. Defendant is ordered to move or plead within 20 days. From the complaint it appears the facts are that debtor Robert Hageman, Jr., is the beneficiary of the Last Will and Testament of his father who died approximately seven months prior to debtor filing bankruptcy. A week or so before filing bankruptcy, debtor, acting pursuant to Nebraska Statute 30-2352 renounced his interest in his father's estate. Plaintiff has now sued the debtor and spouse and named the children of debtor to whom the interest passes, praying for a judgment setting aside the passing of the interest on the theory that the renunciation and subsequent passing of the interest are fraudulent as to creditors on the plain sense of the Uniform Fraudulent Conveyance Act in effect in Nebraska at Section 36-601 et seq. R.R.S. (1984).

FILED
DISTRICT OF NEBRASKA
AT
SEP 1 1988
Judith M. Napier
Clerk, U.S. Bankruptcy Court
By _____ Deputy

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Defendant moves to dismiss alleging that plaintiff has no cause of action because, first, there has been no "conveyance" which is required by the UFCA and, second, the disclaimed inheritance was not an "interest in property" because the renunciation statute, if complied with, passes the interest in decedent's estate to other parties as if the person renouncing had predeceased the decedent. Defendant argues that this statutory result means that nothing passed to Robert Hageman, so he could not have "conveyed" an "interest in property" and, therefore, there is no conveyance to set aside or avoid in bankruptcy.

At least three courts have construed the effect of disclaimers under statutes similar to the Nebraska statute in states which had adopted the Uniform Fraudulent Conveyance Act and have determined that upon the death of the decedent there passed to the beneficiary the right to exercise the power to accept or disclaim the gift and that the inheritance of such right is a present interest in property. See In re Kalt's Estate, 108 P.2d 401 (Calif. 1940); Matter of Estate of Reed, 566 P.2d 587 (Wyo. 1977). Stein v. Brown, 480 N.E.2d 1121 (Ohio 1985).

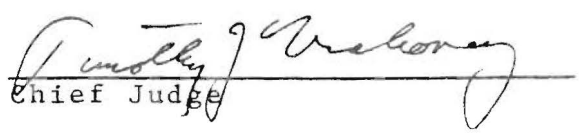
In addition, the Eighth Circuit Court of Appeals suggested, in dictum, that such an interest, if not disclaimed prior to bankruptcy, would pass to the trustee under the Bankruptcy Code. In re Detlefson, 610 F.2d 512 at 529 (8th Cir. 1979).

Finally, if an interest in property, even limited to an exercisable power, passed to Robert Hageman, Jr., on the death of his father, the act of renouncing or disclaiming the interest in the estate could be a "transfer" which is all that is required for a "conveyance" under UFCA.

Since it is possible, under Nebraska law, that Mr. Hageman received an interest in property upon the death of his father and it is possible under Nebraska law that the act of renouncing that interest is a "conveyance" under the Nebraska version of the UFCA, plaintiff has sufficiently pled a claim for which, if the appropriate evidence is presented at trial, relief could be granted.

DATED: September 14, 1988.

BY THE COURT:



Chief Judge