

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

KEITH BEETHE and  
ANGIE BEETHE,

DEBTORS

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CASE NO. BK84-1161

MEMORANDUM OPINION

Hearing was held in Lincoln, Nebraska, on FDIC's objection to exemptions. FDIC was represented by Clifford Ruder of Omaha, Nebraska. Debtors were represented by Clay Statmore of Lincoln, Nebraska.

Findings of Fact

From arguments and briefs, the Court determines the following facts. Originally, the debtors Keith and Angie Beethe filed a Chapter 11 reorganization in bankruptcy in June, 1984. On the schedules, they claimed as exemptions "All exemptions permitted by Nebraska statutes." Among the exempt property was real property claimed as the debtors' homestead. This property was held under a land contract from seller, Laurretta Hothan. Ms. Hothan received an order for relief from the automatic stay and foreclosed on the property. Debtors later converted their Chapter 11 proceedings to a Chapter 7 case in March, 1987. They then amended Schedule B-4 by removing the homestead exemption and replacing it with personal property exemptions. The FDIC objected to this amendment as contrary to § 25-1552 Nebraska R.R.S. (1943) (Cum. Supp. 1984).

Conclusions of Law and Discussion

Debtors may amend their schedules to replace the homestead exemptions with the general personal property exemption, since they no longer possessed the homestead property at the date of conversion from Chapter 11 to Chapter 7.

Although this case is not identical to that of the Lindbergs in In Re Lindberg, 735 F.2d 1087, (8th Cir. 1984), it is closely analogous and the reasoning in that case is persuasive. Like debtors under Chapter 13, Chapter 11 debtors remain in possession of the estate. Thus, the purpose of the schedules and statements required under Bankruptcy Rule 1007 and 11 U.S.C. §§ 521 and 1106(a)(2) for a Chapter 11 case is to establish a foundation upon which the Court can base a determination of the feasibility of the plan. Upon conversion to Chapter 7, new schedules may be filed listing the property as of the date of conversion. Rule 1019.

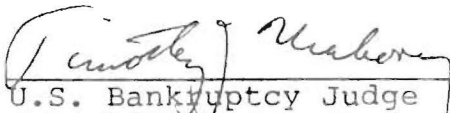
Upon conversion to Chapter 7, property of the estate may and probably will be different from the property existing on the date of the Chapter 11 petition. This rule also provides for new time periods for filing claims or complaints objecting to discharge or the determination of dischargeability and requires a new creditors' meeting. It does not seem reasonable that all processes should start fresh upon conversion if the debtor was to be bound to the property and exemptions listed on the Chapter 11 schedules. Particularly, when as here, a considerable period of time elapsed between initial filing and conversion. Lindberg is clear in its holding that the property of an estate in a conversion is the property in which the debtor had an interest on the date of conversion and that the same date controlled in determining what exemptions the debtor could claim from the estate. In Re Lindberg at 1090.

Another factor which weighs in favor of allowing debtors to amend their schedule of assets is R.R.S. § 40-103(2), which states that "The homestead is subject to execution or forced sale in satisfaction of judgments obtained. . . on debts secured by mortgages upon the premises executed and acknowledged by both husband and wife. . . ." Once Ms. Hothan obtained a judgment to foreclose on the property being purchased by the Beethes and obtained possession, that property was no longer property of the estate. The Beethes did not have a homestead to exempt at the time they converted to Chapter 7. As a result, they came within the class of persons entitled to claim exemptions under R.R.S. § 25-1552. The position of the debtors here can be distinguished from that of debtor in State ex rel Hilton v. Townsend, 17 Neb. 530, 23 N.W. 509 (1885) where debtor attempted to convey his already mortgaged homestead to his attorney in satisfaction of the attorney fees and then claim the in lieu of homestead exemptions. Debtor, who still resided on the property, was held to be in possession of the homestead even though it was mortgaged for nearly the full value.

Objection of FDIC overruled. Separate Journal Entry will be filed.

DATED: November 2, 1987.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies to:

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