

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

ARTHUR M. KAGIN,  
  
Debtor.

Case No. 88-796-C H  
  
Chapter 7

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ROBERT D. TAHA,  
  
Plaintiff/Trustee,

Adv. No. 88-0128

V.

ARTHUR M. KAGIN,  
  
Defendant.

ORDER- -MOTION FOR SUMMARY JUDGMENT

On August 5, 1988, a hearing was held on Plaintiff Trustee's Motion for Summary Judgment. On August 12, 1988, a hearing was held on Defendant Debtor's Motion for Judgment on the pleadings. The following attorneys appeared: Richard F. Stageman and Elizabeth E. Goodman for Defendant Debtor (hereinafter "Debtor") and Robert D. Taha, Plaintiff Trustee (hereinafter "Trustee"). Both matters were taken under advisement with a briefing deadline. Briefs were timely filed and the Court considers the matters fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b) (2) (E). The Court, upon review of the pleadings, arguments of counsel and briefs, now enters its findings and conclusions pursuant to Fed.R.Bankr. 7052.

FINDINGS OF FACT

1. On April 13, 1988, Debtor filed a Chapter 7 petition.

2. Earlier that day, Debtor cashed a \$7,000.00 Individual Retirement Account (IRA) and gave it to a Principal Mutual (hereinafter "Principal Mutual") life insurance agent for the purpose of converting a non-exempt IRA into an exempt unmatured life insurance policy. The Principal Mutual life insurance policy was neither approved nor issued when Debtor's bankruptcy petition was filed.

3. Debtor listed the above-described transaction on his schedule B-4 as an exempt unmatured life insurance policy as follows:

Insurance policy (in process)	
Principal Mutual Life	
699 Walnut, 4th Floor	Iowa Code 627.6(6)
Des Moines, Iowa 50309	
\$7, 000. 00	

4. The Principal Mutual policy was neither approved prior to nor after Debtor filed his Chapter 7 petition. Principal Mutual's reasons for not approving the policy were not provided in the record.

5. Following this rejection, Debtor submitted a second life insurance application to a different insurance company after he filed his Chapter 7 petition. This life insurance policy application was approved by the Jackson National Life Insurance Company (hereinafter "Jackson National"). Said approval occurred

after Debtor filed his Chapter 7 petition though no date is provided by the parties or the record.

6. Debtor amended his schedule B-4 twice. It was amended on May 16, 1988, to add a homestead, and also on August 3, 1988, to add both a Cadillac Seville and a GI life insurance policy valued at \$10,000.00. Debtor's schedule B-4 was never amended to either add or substitute an unmaturred life insurance policy from Jackson National after Principal Mutual refused to issue the policy applied for pre-petition. Nor was Debtor's schedule B-4 ever amended to substract or exclude the unmaturred life insurance policy "(in process)" from Principal Mutual.

7. The first meeting of creditors was held May 13, 1988.

8. On June 22, 1988, Trustee filed this adversary proceeding to recover property of the estate, i.e., \$7,000.00 that Debtor indicated on schedule B-2 [sic] as "insurance policy (in process) ," because Principal Mutual never issued the policy. Trustee argued the \$7,000.00 was never a binding contract of insurance on the date of the bankruptcy filing and, therefore, constituted property of the estate under 11 U.S.C. §541(a).

9. On July 25, 1988, Debtor filed an answer and argued that since Trustee failed to object to Debtor's claimed exemption within 30 days as provided under Bankruptcy Rule 4003(b), the property claimed as exempt is exempt under 11 U.S.C. §522(1). Debtor further argued the life insurance policy obtained post-petition should be allowed as exempt under principles of equity.

10. On July 27, 1988, Trustee filed a motion for summary judgment.

11. On August 12, 1988, Debtor filed a motion for judgment on the pleadings.

#### DISCUSSION

Bankruptcy Rule 7056 provides that Federal Rule of Civil Procedure 56, which governs motions for summary judgment, applies in bankruptcy adversary proceedings. The Eighth Circuit Court of Appeals has set forth the following standard:

Summary judgment is appropriate only when the moving party satisfies its burden of showing the absence of a genuine issue as to a material fact and that it is entitled to judgment as a matter of law. In reviewing a motion for summary judgment, the court must review the facts in the light most favorable to the opposing party and must give that party the benefit of all reasonable inferences to be drawn from the facts. This court often has noted that summary judgment is "an extreme and treacherous remedy," and should not be entered "unless the movant has established its right to a judgment with such clarity as to leave no room for controversy and unless the other party is not entitled to recover under discernable circumstances."

Foster v. Johns-Manville Sales Corp., 787 F.2d 390, 391-92 (8th Cir. 1986) (citations omitted).

Bankruptcy Rule 7012 provides that Federal Rule of Civil Procedure 12(b)-(h) shall apply in adversary proceedings. F.R.Civ.P. 12(c) provides:

Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded

by the courts, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

F.R.Civ.P. 12(c). In the case at bar, Trustee filed his motion for summary judgment based upon allegations contained in his complaint to recover property of the estate. Debtor filed his motion for judgment on the pleadings based upon the pleadings and all other papers of record. Since Debtor has requested that papers outside the pleadings be included within his motion, the briefs and motions filed by the respective parties will be taken into consideration and Debtor's motion for judgment on the pleadings will be treated as one for summary judgment, the standard for which is described above. Because no material facts are in dispute, the issues are purely legal and the Court will be granting summary judgment for one of the parties.

The issue in this case is whether Debtor can validly exempt an insurance policy applied for pre-petition but not in existence on the date the petition was filed. Iowa Code §627.6(6) sets out the insurance exemption and provides that a debtor can exempt "[a]ny unmaturred life insurance policy owned by the debtor, other than a credit life insurance contract. Iowa Code §627.6(6) (1987) (emphasis added). This subsection was amended by the Iowa General Assembly in 1988 but said amendment is inapplicable because it only applies to cases filed on or after May 15, 1988. While Iowa exemptions statutes are to be liberally construed in favor of those

claiming their benefits, Matter of Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980), the fact remains bankruptcy exemption rights are determined as of the date of filing the bankruptcy petition. In re O'Brien, 67 B.R. 317, 319 (Bankr. M.D. Iowa 1986) (citing Hahn, 5 B.R. at 245). As a result, the Court must determine whether Debtor owned the life insurance policy on April 13, 1988, the date he filed his petition.

In deciding whether a debtor owns an insurance policy, the Court notes an application for insurance standing alone does not constitute a binding contract of insurance. Appleman, 12 Insurance Law and Practice §7121 at 441 (1981). The application is merely an offer or request for insurance and if rejected by the insurer, no contract for insurance results. Id. at 442. The fact premiums were paid upon application does not establish an insurance contract. Id. at 454. Rather, the submitted application must be accepted by the insurer in order to constitute an enforceable insurance contract. Id. at 447.

In the case at bar, Debtor did not own an unmatured life insurance policy on April 13, 1988, the date he filed his Chapter 7 petition. Earlier that day Debtor had applied for an insurance policy with Principal Mutual and had paid the premium to an agent. However, Principal Mutual never approved the application so Debtor subsequently submitted a second life insurance application sometime after the filing of his Chapter 7 petition. Jackson National accepted this application but said acceptance occurred after Debtor

filed his petition. Moreover, Debtor never amended his schedule B-4 to alert Trustee that the first policy "in process" was never issued or that he intended to claim a different unmaturred life insurance policy as exempt. As a result, the Court concludes Debtor's unmaturred life insurance policy is not exempt under §627.6(6) because Debtor did not own the policy on the date he filed his petition.

The Court recognizes that a debtor may legitimately convert non-exempt assets into exempt property on the eve of bankruptcy. Hanson v. First National Bank in Brookings, 848 F.2d 866, 868 (8th Cir. 1988); McCormick v. Security State Bank, 822 F.2d 806, 807 n.2 (8th Cir. 1987). However, a debtor's right to convert non-exempt property into exempt property ceases after the commencement of the case because the trustee's rights in the "property of the estate" under §541 vest at the time of filing. Matter of Blue, 5 B.R. 723, 725-26 (Bankr. S.D. Ohio 1980). In the instant case, Debtor's attempted conversion of non-exempt IRA proceeds into an exempt unmaturred life insurance policy failed because the insurance policy did not exist when Debtor filed his petition. Debtor's mistake was one of timing--had the policy been approved prior to April 13, 1988, Debtor would have a valid \$7,000.00 exemption under Iowa Code §627.6(6); instead, the post-petition obtained insurance policy is not exempt and thus is subject to Trustee's control as property of the estate under §541.

Debtor's argument that Trustee's complaint circumvents Bankruptcy Rule 4003(b) as an untimely objection to exemption is

also unpersuasive. Said rule allows a trustee to file objections to a debtor's claimed exemption within 30 days after the conclusion of the §341 meeting or the filing of any amendment to the claimed exemptions. See Fed.R.Bankr.P. 4003(b). The Court has strictly enforced the 30-day limit to file objections to exemptions provided there is a good-faith statutory basis for the exemption. Matter of Towns, 74 B.R. 563, 567 (Bankr. S.D. Iowa 1987). In the instant case, the Court finds there is no good faith statutory basis under Iowa Code §627.6(6) for Debtor's claimed exemption because Iowa Code §627.6(6) says "owned" and Debtor did not own an unmaturred life insurance policy when he filed his petition. Moreover, Trustee is entitled to bring a §542 turnover action action at any time "during the case" in contrast to the strict 30 day limitation under Bankruptcy Rule 4003(b). 11 U.S.C. §542(a). Thus, Trustee's complaint is timely.

#### CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes Trustee has satisfied his burden of proving the absence of any genuine issue of material fact and that he is entitled to judgment as a matter of law because Debtor did not own the unmaturred life insurance policy listed on his schedule B-4 on the date of filing.

FURTHER, the Court concludes that since Debtor's post-petition obtained unmaturred life insurance policy cannot be validly exempted, the \$7,000.00 premium payment constitutes property of the estate under §541(a).

IT IS ACCORDINGLY ORDERED that Trustee's motion for summary judgment is granted.

IT IS FURTHER ORDERED that Debtor's motion for judgment on the pleadings is denied.

Dated this 12th day of May, 1989.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
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JUDGMENT

The issues of this proceeding having been duly considered by the Honorable Russell J. Hill, United States Bankruptcy Judge, and a decision having been reached,

IT IS ORDERED AND ADJUDGED that the unmaturred life insurance policy cannot be validly exempted and the \$7,000.00 premium payment constitutes property of the estate.

Dated this 12th day of May, 1989.

Mary M. Weibel  
Clerk U.S. Bankruptcy Court

By: \_\_\_\_\_  
Deputy Clerk

SEAL OF U.S. BANKRUPTCY COURT