

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In re:	:	Case No. 00-2484-DH
BEVERLY A. EICKHOFF,	:	
	:	
	:	Chapter 7
Debtor.	:	
	:	

ORDER—OBJECTION TO EXEMPTION AND OBJECTION THERETO

On April 5, 2001, a telephone hearing was held on Trustee’s Objection to Exemption. Attorney H. J. Dane represented the chapter 7 trustee, A. Fred Berger; attorney Penelope C. Souhrada represented the debtor, Beverly A. Eickhoff. At the conclusion of the hearing, the court took the matter under advisement upon a briefing schedule. Post-hearing briefs have been received, and the court considers the matter fully submitted.

The court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1), 28 U.S.C. § 1334 and order of the United States District Court for the Southern District of Iowa. This is a core proceeding. 28 U.S.C. § 157(b)(2)(B). The court, upon review of the briefs, pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

FINDINGS OF FACT

1. On July 10, 2000, Beverly A. Eickhoff (hereinafter Debtor) filed a petition for chapter 13 protection under the Bankruptcy Code.

2. At the time of the bankruptcy filing, Debtor was employed as an office manager at Bettendorf Medical Center.

3. Debtor participates in a Money Purchase Pension Plan and Trust (hereinafter the Plan) provided by her employer. Each year Debtor's employer contributed funds to the Plan on her behalf amounting to 10% of her compensation for that year. Debtor did not make regular contributions to the plan for the years 1996-2000.

4. The Plan provides a loan program whereby participants may apply for a loan from Plan assets. The loans must be available indiscriminately to all participants and their beneficiaries, adequately secured, bear a reasonable rate of interest, and have a repayment period of not more than five years. A borrower may use up to 50% of his or her vested interest in the Plan as security for a loan.

5. On April 24, 2000, Debtor applied for a loan from the Plan. She signed a promissory note calling for the repayment of \$20,000.00 plus 8.5% interest. Debtor also executed an Irrevocable Pledge and Assignment of 50% of her vested interest in the Plan.

6. On May 9, 2000, Debtor received the \$20,000.00 proceeds of the loan.

7. On June 27, 2000, Debtor repaid \$12,500.00 of the loan.

8. Debtor failed to schedule her interest in the Plan on Schedule B - Personal Property.

9. On her statement of financial affairs, Debtor indicated that she had not paid any payments to creditors of over \$600.00 in the preceding 90 days, and she had not made any gifts of over \$200.00 to a family member in the preceding year. Debtor did indicate that she "returned \$12,500.00 to Davenport Medical Center Retirement Fund."

10. On January 10, 2001, upon motion by Debtor, the court converted the case to chapter 7.

11. Debtor amended her schedules to include her interest in the Plan and claimed it exempt.

12. On February 22, 2001, Trustee filed an objection to Debtor's claim of exemption of her interest in the Plan.

DISCUSSION

Trustee objects to the claim of exemption under Iowa Code § 627.6(8)(e). In particular, he claims that Debtor's repayment of \$12,500.00 to the Plan constituted a contribution above the normal and customary contributions under the Plan. Because the payment was made within one year of the bankruptcy filing, the contribution is nonexempt.

Debtor responds that the Plan is a "qualified plan" under Employee Retirement Security Act (hereinafter ERISA). Therefore, pursuant to the United States Supreme Court holding in Patterson v. Shumate, 504 U.S. 753, 759 (1992), the Plan is not property of the bankruptcy estate. Alternatively, Debtor disputes the characterization of the repayment as a "contribution" and argues that the Plan is fully exempt under § 627.6(8)(e).

At the telephonic hearing, counsel for Trustee candidly admitted that he was unsure whether the proper course was to pursue an objection to exemption or an action to avoid a preferential transfer. Trustee was concerned with the lack of accounting of the \$20,000.00 acquired by debtor shortly before filing for bankruptcy protection. Based on

counsel's statements and the lack of challenge to Debtor's assertion, the court surmises that Trustee apparently concedes that the Plan is most likely ERISA-qualified. However, he maintains that Debtor made a nonexempt contribution to the plan. He additionally suggests that Iowa Code § 627.6(8)(f)(3) limits the amount of contributions that Debtor could make to the Plan to \$2,000.00 per year.

For the following reasons, the court determines that Debtor's \$12,500.00 payment was in the nature of an installment loan repayment and not a plan contribution.

Accordingly, Trustee's objection to exemption will be overruled.

The filing of a bankruptcy petition creates an estate comprised of all "legal and equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Congress intended the scope of § 541(a) to be broad. United States v. Whiting Pools, Inc., 462 U.S. 198, 204 (1983); N.S. Garrott & Sons v. Union Planters Nat. Bank of Memphis, (In re N.S. Garrott & Sons), 772 F.2d 462, 466 (8th Cir. 1985). However, the reach of the bankruptcy estate is not without bounds. The United States Supreme Court has determined that Congress intended to exclude from the estate some minor interests of the debtor in property of others such as a lien or bare legal title. Whiting Pools, 462 U.S. at 205 n.8. Section 541(b) lists the property which the estate does not include. Further, "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title." 11 U.S.C. § 541(c)(2).

The United States Supreme Court has determined that the anti-alienation provision, mandatory in an ERISA-qualified pension plan, 29 U.S.C. § 1056(d)(1),

constitutes a “restriction on transfer” of a “beneficial interest” in a trust. Patterson v. Shumate, 504 U.S. 753, 759 (1992). In Shumate, the debtor was a participant in an ERISA-qualified pension plan. The Chapter 7 trustee claimed the debtor’s beneficial interest in the plan as property of the bankruptcy estate, and filed an adversary proceeding seeking turnover of the property to the estate. After determining that the plain language of § 541(c)(2) encompassed federal as well as state law, the Supreme Court held that the “anti-alienation provision required for ERISA qualification and contained in the Plan at issue in this case thus constitutes an enforceable transfer restriction for purposes of § 541(c)(2)’s exclusion of property from the bankruptcy estate.” Id., at 60. The Eighth Circuit subsequently reversed its position on the issue, and now holds that a debtor’s interest in an ERISA-qualified pension plan may be excluded from the bankruptcy estate. See, Iannacone v. Northern States Power Co. (In re Conlan), 974 F.2d 88 (8th Cir. 1992).

In this case, Debtor has not offered the Plan document as evidence, nor has she offered a certification by the Internal Revenue Service or the Department of Labor indicating that the Plan is ERISA-qualified. As evidence of the Plan, Debtor has supplied a Summary Plan Description (hereinafter the Summary). Such a summary is required by ERISA §§ 102 & 104; 29 U.S.C. §§ 1022 & 1024.

Parenthetically, the court notes that without a copy of the Plan, it is unable to determine the scope of the anti-alienation provision. As the Summary states, “The provisions of your Plan may only be determined accurately by reading the actual Plan document.” In the face of a vigorous objection by Trustee, the court would be hard

pressed to find a pension outside the scope of the bankruptcy estate without the plan documents to examine. However, as stated above, Trustee does not contest the ERISA-qualified status of the Plan, and the court, therefore, infers that the Plan contains an appropriate anti-alienation provision. See ERISA § 206(d)(1); 29 U.S.C. § 1056(d)(1).

According to the Summary, a participant or beneficiary may apply for a loan from the Plan. ERISA provides that a plan is not prohibited from making such loans if certain criteria are met. ERISA § 408(b)(1); 29 U.S.C. 1108(b)(1). Those criteria include that the loans be made available to all participants and beneficiaries on a reasonably equivalent basis; loans are not made available to highly compensated employees in a greater amount than to others; loans are made in accordance with specific provisions set forth in the plan; loans bear a reasonable rate of interest; and loans are adequately secured. Id. The Summary indicates that the Plan incorporates these requirements.

Debtor provided documents showing that she acquired a \$20,000.00 loan from the Plan. The documents include a loan application, a promissory note, and a pledge and assignment. She signed the loan documents on April 24, 2000, and received the funds on May 9, 2000. She secured the loan with an assignment of 50% of her vested interest in the Plan. Although the general rule is that benefits from an ERISA-qualified pension plan may not be assigned or alienated, an exception exists for loans from the plan to participants or beneficiaries. 26 C.F.R. § 1.401(a)-13(d)(2).

On June 27, 2000, Debtor made a payment of \$12,500.00. A loan statement indicates that, \$226.10 of the payment was applied to interest and \$12,273.90 was applied to the principal. The payment reduced the balance of the secured debt to \$7,726.10.

The court finds that Debtor has provided sufficient evidence to prove that the \$12,500.00 was made as a loan payment and not a contribution to the Plan. Therefore, Trustee's objection to exemption based on excessive contribution must fail.

Although the court overrules Trustee's objection to exemption, it shares his concern that the disposition of the \$20,000.00 has not been adequately disclosed. Trustee raises concerns about preferential transfers. The court declines to reach the merits of such claims, as they are properly raised in the context of an adversary proceeding. Fed. R. Bankr. P. 7001. However, the court will order Debtor to account for all the funds received from loan. Trustee may then determine his appropriate course of action.

ORDER

IT IS THEREFORE ORDERED as follows:

1. Trustee A. Fred Berger's Objection to Claim of Exemptions is OVERRULED.
2. Within fifteen (15) days of the entry of this order, Debtor shall file an accounting of the disposition of the \$20,000.00 loan received from the Money Purchase Pension Plan and Trust.

RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT