



The FLB bid the sum of \$120,000.00 for the real estate and subsequently received a sheriff's deed to the property. The FLB filed an unsecured proof of claim for the deficiency in the amount of \$71,875.05 on August 21, 1987.

The debtors list and declare as exempt on their Schedule B-4 the house in Ogden, Iowa as a homestead pursuant to Iowa Code section 561.16. This homestead was purchased in January of 1986 with funds derived from a life insurance policy owned by the debtors. The life insurance policy was purchased during the 1950's.

The FLB filed an objection to the debtors' claim of exemption in the homestead and asserted that the homestead is not exempt from debts contracted prior to its acquisition pursuant to Iowa Code section 561.21(1). The debtors filed a resistance to the FLB's objection and asserted that the funds used to purchase the homestead were proceeds from exempt assets and therefore the exemption should follow in the homestead. Alternatively, the debtors asserted that the FLB has no judgment lien on the property.

The debtors rely upon Iowa Code section 511.37 in claiming that the homestead bought with exempt insurance proceeds is exempt from debts contracted prior to its acquisition. Section 511.37 provides:

A policy of insurance on the life of an individual, in the absence of an agreement or assignment to the contrary, shall inure to the separate use of the spouse and children of said individual, independently of the individual's creditors.

The proceeds of an endowment policy payable to the assured on attaining a certain age shall be exempt from liability for any of the assured's debts.

Any benefit or indemnity paid under an accident, health or disability policy shall be exempt to the assured or in case of the assured's death to the spouse and children of the assured, from the assured's debts.

The avails of all policies of life, accident, health or disability insurance payable to the surviving widow shall be exempt from liability for all debts of such beneficiary contracted prior to the death of the assured, but the amount thus exempted shall not exceed fifteen thousand dollars.

In construing section 511.37 the Iowa Supreme Court noted that "[t]hese statutes...plainly establish public policy of the state that the avails of life insurance shall be devoted to the benefit of surviving spouse and children free from payment of debts." Westinghouse Credit Corporation v. Crotts, 250 Iowa 1273, 98 N.W.2d 843, 845 (1959). In Westinghouse, the court reversed an order requiring a debtor to obtain the cash surrender value of two life insurance policies and apply the same to a creditor's judgment. The court noted that:

Even though a policy of life insurance has a cash surrender value which the insured may obtain if he elects to exercise his option to surrender the policy and take such value, the general import of the greater amount of authority is that ordinarily a creditor of the insured cannot reach and subject to his claim the cash surrender value of such a policy where the insured has not exercised his option to surrender the policy for such cash, ... Even where the creditor

of a life insured has pursued an equitable remedy for the purpose of reaching the cash surrender value of the life insurance policy, it has more generally been considered that where the insured has not exercised his option to surrender the policy for its cash surrender value, the insured's optional right to obtain such surrender value does not constitute a debt due him by the insurer and that a court of equity will not compel the insured to exercise such option for the benefit of his creditors.

Westinghouse, and \_\_\_\_\_, 98 N.W.2d at 848, citing Marquis v. New York Life Ins. Co., 92 Ohio App. 389, 108 N.E.2d 227, 37 A.L.R.2d 261, 281 (1954) (emphasis added). Thus, where the insured has exercised the option to surrender the policy for its cash surrender value, it appears that the cash is not exempt from the claims of creditors under Iowa Code section 511.37.

The debtors further rely upon Iowa authority for the proposition that property purchased with the exempt insurance proceeds is likewise exempt. In Cook v. Allee, 119 Iowa 226, 93 N.W. 93 (1903) the Iowa Supreme Court held that a homestead purchased by a widow with life insurance proceeds was exempt from levy and sale to satisfy an antecedent debt not under the homestead statute, but because it was purchased with exempt funds, for the use and convenience of the plaintiff and her minor children. In construing the predecessor statute to section 511.37 the court stated:

[I]t is clear that the purpose has been to provide that the money derived from life or accident insurance shall inure to the benefit of the widow, exempt from her antecedent debts. ... it follows

that she may invest a part or the whole thereof in property which shall be necessary for the comfort and support of herself and her family without impairing this right of exemption; for to deny her this right might, and often times would, destroy the benefits the statute was intended to confer. The legislature never intended to limit the exemption to the money itself, because to so limit it would be to destroy the value of the money as a purchasing medium, and it has no other ordinarily.

Id. at \_\_\_\_\_, 93 N.W. at 93, see also, Booth v. Martin, \_\_\_\_\_ Iowa \_\_\_\_\_, 139 N.W. 888, 889 (1913).

The distinction between this case and the Cook case is simply that in Cook the insurance proceeds used to purchase a homestead were received by the surviving widow after the death of her husband. Here the insurance policy was cashed in by the debtors and the proceeds were used to purchase a homestead approximately one year prior to filing bankruptcy. While the court is mindful of the well-settled proposition that exemption statutes must be liberally construed, Frudden Lumber Co. v. Clifton, 183 N.W.2d 201,203 (Iowa 1971), the court will not depart substantially from the express language of the exemption statute. Iowa Code section 511.37 exempts the avails of life insurance policies "payable to the surviving widow". This language as well as the apparent intent to support a surviving spouse and children leads the court to conclude that the voluntary cashing-in of an insurance policy will not extend the exemption to property purchased with the proceeds unless the property purchased

would otherwise be exempt. Accordingly, if the homestead property is exempt it must be exempt under the homestead provisions of Iowa Code section 561.16.

As noted above the FLB objects to the debtors' claim of exemption in the homestead asserting that the homestead is not exempt from a debt contracted prior to its acquisition pursuant to Iowa Code Section 561.21(1). In this regard the debtors resist the FLB's objection on the ground that the FLB has no judgment lien on the property.

With respect to the homestead exemption, Iowa Code section 561.16 provides:

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary ....

This general exemption is qualified by Iowa Code section 561.21(1) which reads:

The homestead may be sold to satisfy debts of each of the following classes:

- (1) Those contracted prior to its acquisition, but only to satisfy a deficiency remaining after exhaust-ing the other property of the debtor, liable to execution.

This court has held that a debtor may claim a homestead exempt only to the extent it is not necessary to satisfy a deficiency with respect to an antecedent claim and, accordingly, that a debtor may not avoid any existing or "anticipated" lien to the extent an antecedent debt might not be satisfied by exhausting other property subject to execution. Matter of Nehring, No. 87-101-C, slip op. (Bankr. S.D. Iowa,

March 22, 1988). Then, in the case of an antecedent debt that has been reduced to judgment before the bankruptcy petition was filed, the claimholder may seek a judicial sale in state court to the extent any deficiency exists upon discharge and liquidation. However, absent blatant abuse of the statutory framework the court will not grant the unsecured claimholder relief from the automatic stay to attempt to obtain a judgment prior to the entry of a discharge. Id.

In this case the unsecured \$71,875.05 debt owed the FLB was subject to the discharge entered October 7, 1987. The FLB did not seek relief from the stay to attempt to obtain a judgment and the court would not have granted the FLB relief from stay to obtain a judgment lien—no blatant abuse of the statutory framework would have resulted. To have done otherwise would have given the FLB an advantage over the other unsecured creditors.

WHEREFORE, based on the foregoing analysis, the court hereby finds that the debtors' homestead is not exempt for the reason that it was purchased with insurance proceeds. Rather, the homestead is exempt under Iowa Code sections 561.16 and 561.21(1) to the extent it is not necessary to satisfy a deficiency with respect to the Federal Land Bank's antecedent claim.

THEREFORE, the Federal Land Bank's objection to debtors' claim of exemption is sustained. The Federal Land Bank's unsecured antecedent claim, however, has been discharged and

the Federal Land Bank is barred from seeking to enforce it.

Signed and filed this 31st day of March 1988.

LEE M. JACKWIG  
CHIEF U.S. BANKRUPTCY JUDGE