

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION**

<b>In re:</b>	)	
	)	
<b>Herbert Lee Groover and</b>	)	<b>03-51013</b>
<b>Linda Diane Groover,</b>	)	
	)	
<b>Debtors.</b>	)	
	)	

**ORDER DENYING TRUSTEE'S OBJECTION TO  
DEBTORS' CLAIM FOR PROPERTY EXEMPTION**

This matter came before the Court on September 24, 2003 upon the objection by the Chapter 7 Trustee to the Debtors' claim for property exemption for a life insurance policy. Robert E. Price, Jr. appeared on behalf of the Debtors. Also appearing at the hearing was Edwin H. Ferguson, Jr., Chapter 7 Trustee. After considering the Trustee's objection, the evidence and arguments of counsel, the Court makes the following findings of fact and conclusions of law.

**FACTS**

On September 23, 2002, the Debtors purchased 18.493 acres of real property located in Greyson County, Virginia (the "Property") along with Constance and Chad Hill (the "Hills"), their daughter and son-in-law. The Debtors and the Hills each contributed \$36,000 to the purchase of this Property, for a total purchase price of \$72,000. At the time, Mr. Groover was employed as a principal of Forsyth Drywall.

In late January 2003, Forsyth Drywall lost its financing and the business closed. Mr. Groover lost his source of income and his benefits, including the premium payments for a \$1,000,000 life insurance policy, for which Ms. Groover and Forsyth Drywall were beneficiaries.

Mr. Groover did have the right to continue the life insurance policy by making premium payments directly, but the Debtors had insufficient funds at the time to do so. On March 26, 2003, Forsyth Drywall filed a Chapter 7 bankruptcy petition.

On March 19, 2003, the Debtors sold their one half interest in the Property to the Hills for \$36,000. The Debtors used \$9,500 of the proceeds to pay on an existing loan. On April 1, 2003, the Debtors used the balance of \$26,500 to purchase a whole life insurance policy on Mr. Groover in the amount of \$70,281. Mrs. Groover is the named beneficiary of that policy.

The Debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code on April 7, 2003. On their Statement of Financial Affairs, the Debtors disclosed both the sale of the Property and the purchase of the life insurance policy. On July 7, 2003, the Trustee filed an objection to the Debtors' exemption of the life insurance policy.

At the hearing on this matter, Ms. Groover testified that after the collapse of the business, the Debtors sought the advice of counsel and began planning for bankruptcy. The Debtors attempted to liquidate some of their property, and ultimately sold their one half interest in the Property in Virginia. After the sale of the Property, the Debtors consulted with counsel again, and were advised that if they purchased a life insurance policy with those proceeds, that policy would be exempt. Ms. Groover testified that the Debtors also felt they needed to replace the life insurance that Mr. Groover had lost from Forsyth Drywall. Ms. Groover was particularly concerned because Mr. Groover has experienced some health problems in the past. Therefore, the Debtors made the decision to purchase the life insurance policy.

## **DISCUSSION**

The Trustee has objected to the Debtors' exemption of their life insurance policy on the

basis that the Debtors converted non-exempt property into exempt property within 90 days of the bankruptcy filing. North Carolina has opted out of the exemptions provided in § 522(d) of the Bankruptcy Code, therefore North Carolina law determines which exemptions are available to debtors in this state. The exemptions are listed in N.C. Gen. Stat. § 1C-1601(a)(1) - (9). N.C. Gen.Stat. § 1C-1601(a)(6) provides that an individual debtor in North Carolina is entitled to retain life insurance as provided in Article X, Section 5 of the Constitution of North Carolina, free of the enforcement of the claims of creditors. North Carolina law also carves out a small exception for some types of recently purchased exempt property. Specifically, N.C. Gen.Stat. § 1C-1601(d) provides that the exemptions set forth in N.C. Gen. Stat. § 1C-1601(a)(2) - (5), are “inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for bankruptcy.” The exception set forth in N.C. Gen. Stat. § 1C-1601(d) does not apply to § 1C-1601(a)(6), the subsection which provides for an exemption for life insurance.

In contrast, the Bankruptcy Code does not contain a provision excluding the purchase of exempt assets within the 90 days preceding the filing of a bankruptcy petition. The conversion of non-exempt assets into exempt assets, standing alone, will not deprive a debtor of an exemption to which he or she would otherwise be entitled. Ford v. Poston, 773 F.2d 52, 54 (4<sup>th</sup> Cir. 1985); Norwest Bank Nebraska, N.A. v. Tveten, 848 F.2d 871, 873 (8<sup>th</sup> Cir. 1988). Pre-bankruptcy planning permits a debtor to make full use of the exemptions to which he or she is entitled under the law. Ford, 773 F.2d at 54.

While pre-bankruptcy planning in moderation is permissible, when taken to excess, such planning may be improper. See In re Home, 2002 WL 507117 (Bankr. W.D.N.C. 2002); In re

Zouhar, 10 B.R. 154, 157 (Bankr. N.M. 1981). A trustee may seek to deny a debtor's discharge if there is evidence that a debtor converted non-exempt property with an intent to defraud creditors. See, e.g., Matter of Swift, 3 F.3d 929, 931 (5<sup>th</sup> Cir. 1993); Matter of Smiley, 864 F.2d 562, 567 (7<sup>th</sup> Cir. 1989); In re Boudrot, 287 B.R. 582 (Bankr. W.D. Okla. 2002). "Mere conversion of property from non-exempt to exempt on the eve of bankruptcy--even though the purpose is to shield the asset from creditors--is not enough to show fraud." Ford, 773 F.2d at 54. Nevertheless, if the transfer of property occurs within one year of the bankruptcy filing and there is evidence of fraudulent intent, a claimed exemption may be subject to the fraudulent transfer provision of 11 U.S.C. § 727. Id. at 55. In this instance, the Trustee is merely objecting to the Debtors' claim for property exemptions. The Trustee is not currently seeking to deny the Debtors a discharge, nor has the Trustee introduced any evidence of fraud.

Because this is purely an objection to the Debtors' claim for exemptions, the court will look to N.C. Gen. Stat. § 1C-1601(d) for guidance. Section 1C-1601(d) specifically enumerates those instances in which the exemptions are inapplicable. The section was intended to "prevent insolvency or bankruptcy planning whereby a debtor would convert non-exempt assets into exempt assets, or incur dischargeable obligations in exchange for assets which could then be claimed exempt, in certain instances." In re Hallman, 26 B.R. 34, 35-6 (Bankr. W.D.N.C.1982). In construing the meaning of a statute, it is presumed that the legislature acted with care and deliberation. See State v. Benton, 276 N.C. 641, 658, 174 S.E.2d 793, 804 (1970). When the language of a statute is clear and unambiguous, the court must give the statute its plain and definite meaning, and is "without power to interpolate, or superimpose, provisions and limitations not contained therein." Liberty Mut. Ins. Co. v. Pennington, 356 N.C. 571, 574-75,

573 S.E.2d 118,121 (2002)(citations omitted).

Pursuant to traditional principles of statutory construction, the omission of life insurance policies from N.C. Gen. Stat. § 1C-1601(d) leads this court to the conclusion that the North Carolina State legislature did not intend to exclude a life insurance policy purchased within the 90 days preceding a bankruptcy from a debtor's allowable exemptions. By specifically listing the types of assets that are not exempt if purchased within 90 days of a bankruptcy, the statute implicitly authorizes the purchase of those exempt assets which are not listed. Therefore, the court finds that Debtors are entitled to claim their life insurance policy as exempt as provided by N.C. Gen. Stat. § 1C-1601(a)(6).

IT IS THEREFORE ORDERED that the objection by the Chapter 7 Trustee to the Debtors' claim for property exemption for a life insurance policy is denied.

This the 14<sup>th</sup> day of October 2003.

Catharine R. Carruthers  
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United States Bankruptcy Judge