

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

IN RE:

Michael J. Krak

Karen A. Krak

Debtors.

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Case No. 98-52115 C-7W

**ORDER ALLOWING TRUSTEE'S MOTION CONCERNING DISTRIBUTION
OF FUNDS TO CLAIM NO. 2 OF SEARS, ROEBUCK & CO., CLAIM
NO. 3 OF GM CARD, AND CLAIM NO. 8 OF UNIVERSAL CARD**

THIS MATTER came on for hearing before the undersigned bankruptcy judge on April 18, 2001, in Winston-Salem, North Carolina upon the Trustee's Motion Concerning Proposed Distribution of Funds as Pertains to Claim #2 of Sears, Roebuck & Co.; Claim #3 of GM Card; and Claim #8 of Universal Card. Appearing at the hearing were Edwin H. Ferguson, Jr., as Chapter 7 Trustee and Attorney for Trustee, Gail C. Arneke, on behalf of the Debtor, and Robin Palenske, on behalf of the United States Bankruptcy Court Administrator.

This court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O) which this court may hear and determine.

After considering the arguments of counsel and reviewing the file, the court makes the following:

FINDINGS OF FACT

1. This case was filed on behalf of the joint debtors, Michael J. Krak and Karen A. Krak, on November 9, 1998.

2. The meeting of creditors under section 341 of the Bankruptcy Code was conducted on December 4, 1998, and an Order of Discharge was entered on February 9, 1999.

3. The male debtor, Michael J. Krak, died of lung cancer on April 8, 1999, which was within 180 days of the bankruptcy filing.

4. Following the male debtor's death, proceeds from a life insurance policy owned by the male debtor were paid to the female debtor.

5. The Chapter 7 Trustee received the insurance proceeds, less funeral bills and expenses, in settlement of the proceeds. The insurance proceeds are the only proceeds that the Trustee has received in this case.

6. Claim number 2 filed by Sears, Roebuck & Co. in the amount of \$5,225.83 is solely in the name of the male debtor.

7. Claim number 3 filed by The GM Card in the amount of \$10,552.00 is solely in the name of the male debtor.

8. Claim number 8 filed by Universal Card Services in the amount of \$2,459.96 is solely in the name of the male debtor.

DISCUSSION

The Trustee contends that claims 2, 3 and 8 are solely the debts of the male debtor and that funds belonging to the female debtor should not be used to pay the claim. Thus, the Trustee requests that the court deny any distribution to these claims as the insurance proceeds received by the female debtor are the only proceeds in the estate.

Section 302 (a) of the Bankruptcy Code permits a married couple to file a joint petition in order to simplify administration and to permit the payment of one filing fee. 11 U.S.C. § 302 (a); see In re Crowell, 53 B.R. 555, 557 (Bankr. M.D. Tenn. 1985). However, unless the estates are

formally consolidated, two separate bankruptcy estates continue to exist. In re Reider, 31 F.3d 1102, 1111 (11th Cir. 1994); In re Ageton, 14 B.R. 833, 835 (9th Cir. BAP 1981); In re McAlister, 56 B.R. 164, 166 (Bankr. D. Or. 1985); In re Estrada, 224 B.R. 132 (Bankr. S.D. Cal. 1998). The bankruptcy estates of the Chapter 7 debtors in this case continued to exist after the death of the male debtor. Bankruptcy Rule 1016, entitled "Death or Incompetency of Debtor," provides in relevant part as follows:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

The only proceeds held by the Trustee administering these two estates are the life insurance proceeds received by the female debtor. Property of the estate pursuant to § 541 of the Bankruptcy Code includes:

Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition and that the debtor acquires or becomes entitled to acquire within 180 days after such date -

(A) by bequest, devise, or inheritance[.]

11 U.S.C. § 541. Since the female debtor acquired the interest in the insurance proceeds within 180 days of the filing of the petition, the proceeds became property of her estate. However, North Carolina law provides that the life insurance proceeds in this case are protected from the creditors of the male debtor. Section 58-58-115 of the North Carolina General Statutes provides that, except in case involving fraud,

If a policy of insurance is effected by any person on his own life . . . in favor of a person other than himself . . . the lawful beneficiary or assignee thereof . . . shall be entitled to its proceeds and avails against creditors and representatives of the insured . . .

N.C. Gen. Stat. § 58-58-115. No fraud has been alleged by any party in interest in this case; therefore, the court finds that the North Carolina statute is applicable.

CONCLUSION

The insurance proceeds paid to the female debtor following the death of the male debtor became property of the female debtor's Chapter 7 estate as the female debtor acquired an interest in the proceeds within 180 days of the filing of her petition. 11 U.S.C. § 541. Although a joint petition was filed by the debtors, the cases were not substantively consolidated; therefore, two separate bankruptcy estates were created. Inasmuch as North Carolina law protects the insurance proceeds from the creditors of the male debtor, the proceeds may not be used to pay claims involving debts that were solely in the name of the male debtor.

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that Claim number 2 filed by Sears, Roebuck & Co. in the amount of \$5,225.83; Claim number 3 filed by The GM Card in the amount of \$10,552.00; and Claim number 8 filed by Universal Card Services in the amount of \$2,459.96 are hereby denied distribution from existing funds on hand and being held by the Chapter 7 Trustee.

This the 7 day of May, 2001.

CATHERINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge