[NOT FOR COMMERCIAL PUBLICATION]

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 05-91204
	)	
FRANK K. GARBER and	)	Chapter 7
LOTTIE MARIE GARBER,	)	
	)	Judge Pat E. Morgenstern-Clarren
Debtors.	)	
	)	**MEMORANDUM OF OPINION**
	)	(NOT FOR COMMERCIAL PUBLICATION)

The chapter 7 trustee moves the court for an order directing debtor Frank Garber to turn over $19,198.50 in life insurance proceeds.[1] The debtor opposes the motion on the ground that the proceeds are not property of the estate.[2] For the reasons stated below, the trustee's motion is granted.[3]

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(E).

FACTS

Debtors Frank and Lottie Garber filed a voluntary petition for relief under chapter 7 on October 12, 2005.[4] Seventy-seven days later, on January 28, 2006, Tenny Jean Maynard died,

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[1] Docket 18, 21. Neither side requested an evidentiary hearing.

[2] Docket 20, 23.

[3] This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

[4] Docket 1. The case was filed before October 17, 2005, the effective date of most of the provisions of the Bankruptcy Abuse Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. All citations are, therefore, to the bankruptcy code as it existed before that date.

leaving a life insurance policy listing Mr. Garber as the beneficiary.[5] On April 14, 2006, 182 days after the debtors filed their petition, the life insurance company, American General Life and Accident, paid Mr. Garber the proceeds of the policy totaling $19,198.50.[6]

DISCUSSION

Disposition of After-Acquired Property

Bankruptcy code § 541 states in pertinent part:

> (a) The commencement of a case under . . . this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
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> . . .
>
> (5) 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—
>
> . . .
>
> (C) as a beneficiary of a life insurance policy or of a death benefit plan.

11 U.S.C. § 541(a)(5)(C).

Position of the Parties

The trustee argues that under the plain meaning of § 541 and pertinent Ohio case law, Mr. Garber became "entitled to" receive the proceeds of the life insurance policy when the policy vested in the beneficiary—i.e., upon the death of the insured. Mr. Garber argues that he did not become "entitled to" the life insurance proceeds until the life insurance company completed an "investigation" of the insured's death, which occurred 182 days after the debtors filed their case. To support his argument, Mr. Garber filed a letter from the life insurance company stating that it would not have paid out the proceeds of the policy until it received a certified death certificate listing the cause of death, which in this case it received on April 13,

[5] Docket 18.

[6] Docket 21, 23.

2006.[7] As the insurance company's investigation amounts to a "qualifying contingency," Mr. Garber argues, the policy was not "totally vested and payable" until this investigation was complete. Mr. Garber cites no case law in support of this position.

The Trustee's Turnover Motion

The parties agree that the life insurance proceeds are subject to turnover to the trustee if Mr. Garber acquired or became entitled to acquire those proceeds within 180 days after he filed for bankruptcy.[8] *See* 11 U.S.C. § 541(a)(5)(C); *In re Grogg*, 295 B.R. 297, 303 (Bankr. C.D. Ill. 2003); *In re Doyle*, 209 B.R. 897, 905–06 (Bankr. N.D. Ill. 1997); *Dollinger v. Bottom (In re Bottom)*, 176 B.R. 950, 952 (Bankr. N.D. Fla. 1994). They further agree that the insurance policy in question "vested" upon the death of the insured on January 28, 2006.[9] *See Stone v. Stephens*, 99 N.E.2d 766, 769 (Ohio 1951); *see also Westchester Enterprises, Inc. v. Swartwout (In re Swartwout)*, 123 B.R. 794, 800 (Bankr. S.D. Ohio 1991) (noting that a beneficiary's expectancy interest in a life insurance policy vests upon the insured's death). The only issue is Mr. Garber's argument that his entitlement to the policy's proceeds was contingent upon the completion of the insurance company's investigation. This argument is unsupported by the law and is unpersuasive.

Section 541(a)(5) only requires that Mr. Garber became entitled to acquire the insurance proceeds within the 180-day period. *See* 11 U.S.C. § 541(a)(5); *see also Geekie v. Watson (In re Watson)*, 65 B.R. 9, 11–12 (Bankr. C.D. Ill. 1986) (noting that § 541(a) includes a set of property broader than "vested" property interests). In this case, Mr. Garber became entitled to the proceeds of the policy upon the death of the insured, seventy-seven days after the Garbers filed for bankruptcy. Mr. Garber's entitlement was not contingent upon the completion of any investigation, because the entitlement was created by the policy and by the death of the insured.

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[7] Docket 22. Mr. Garber does not explain how such a letter is admissible under the federal rules of evidence, but that issue is not determinative and the court need not resolve it.

[8] Docket 21, 23.

[9] Docket 21, 23.

The insurance company's investigation merely confirmed the entitlement. A different interpretation of § 541(a)(5) would remove any value in the provision. A debtor would only need to delay the insurance company's investigation until after the 180-day period had passed in order to keep the proceeds of the policy. *Cf. In re Chenoweth*, 3 F.3d 1111, 1112–13 (7th Cir. 1993) (rejecting on similar reasoning a debtor's argument that property bequeathed by will should not be included in the bankruptcy estate when the testator died within the 180-day period, but when the will was not admitted to probate until after the 180-day period). Adopting Mr. Garber's interpretation of § 541(a) could allow a debtor to profit from his own stall tactics, a situation that was certainly not intended by the drafters of the bankruptcy code.

CONCLUSION

For the reasons stated above, Mr. Garber became "entitled to" acquire the proceeds of the life insurance policy upon the death of the insured, not upon the completion of any investigation by the insurance company. The insurance proceeds in question are, therefore, part of the debtors' bankruptcy estate. A separate order will be entered regarding this decision.

Pat E. Morgenstern-Clarren

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

[NOT FOR COMMERCIAL PUBLICATION]

Official Time Stamp
U.S. Bankruptcy Court
Northern District of Ohio
March 13, 2007
(11:06am)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 05-91204
	)	
FRANK K. GARBER and	)	Chapter 7
LOTTIE MARIE GARBER,	)	
	)	Judge Pat E. Morgenstern-Clarren
Debtors.	)	
	)	**ORDER**
	)	(NOT FOR COMMERCIAL PUBLICATION)

For the reasons stated in the memorandum of opinion filed this same date, the trustee's motion for an order directing debtor Frank Garber to turn over funds is granted. (Docket 18). Mr. Garber is ordered to turn over $19,198.50 in life insurance proceeds to the trustee.

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge