

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

RANDAL J. STALEY and
PATRICIA A. STALEY

Bankruptcy No. 95-52448XS

Debtor(s).

Chapter 7

SUPPLEMENTAL DECISION RE: OBJECTION TO LIFE INSURANCE OBJECTION

Debtors' motion for new trial has been denied. Having considered debtors' brief, I now supplement my prior decision (docket no. 30), but I reach the same conclusions. I will sustain the trustee's objection to the exemption from the estate of Patricia Staley's contracts with North American Company for Life and Health Insurance (Company).

Nothing in debtors' brief has persuaded me that under either Iowa or South Dakota law the annuity contract is life insurance or that it should be exempted as such. As it is not exempt as life insurance under Iowa Code § 627.6(6), the issue of when the annuity contract was effective need not be decided.

I previously found that Ms. Staley submitted an application for life insurance to Company's agent on December 11, 1995, and that she paid the initial annual premium of \$4,869.99 the next day. On February 1, 1996, Company issued life policy number L012427530. It was sent to Harvey Youngberg, a Company agent in Yankton, South Dakota, after Staleys had filed bankruptcy. Youngberg delivered it to debtors' attorney.

Ms. Staley contends the policy was effective as life insurance on the date of the application because ultimately all conditions for effectiveness were met and because Ms. Staley intended that it be (debtors' brief, docket no. 32). She argues that temporary life insurance was immediately in effect because the premium was paid upon execution of the application and no medical exam was required. Id. In support of her argument, she cites South Dakota law. Id.

In issuing my initial ruling, I relied on Iowa law, and I consider it to be controlling both as to the exemption of the property, 11 U.S.C. § 522(b)(2)(A), and as to the nature of the property and the debtor's interest in it. In determining the effective date of the contract, I will apply the choice of laws rules of Iowa, the forum state. Modern Leasing, Inc. of Iowa v. Falcon Mfg. of California, Inc., 888 F.2d 59, 62 (8th Cir. 1989). I conclude that an Iowa court in determining what state's law to apply to that issue would use the most significant relationship test set out by the Restatement (Second) of Conflict of Laws (1971). Joseph L. Wilmotte & Co. v. Rosenman Bros., 258 N.W.2d 317, 326 (Iowa 1977). More particularly, an Iowa court would apply § 192 of the Restatement. It states:

The validity of a life insurance contract issued to the insured upon his application and the rights created thereby are determined, in the absence of an effective choice of law by the insured in his application, by the local law of the state where the insured was domiciled at the time the policy was applied for, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the transaction and the parties, in which event the local law of the other state will be applied.

Restatement (Second) Conflict of Laws § 192. "Local law" under the Restatement is a state's body of laws not including its choice of law rules. Id., § 4(1). The Iowa Supreme Court recognized § 192 as the majority rule when it considered the rule's own exception for group life insurance policies. Lindstrom v. Aetna Life Ins. Co., 203 N.W.2d 623, 628 (Iowa 1973) (citing § 192, comment h). The insurance contract did not specify any state's law as controlling.

I do not doubt that South Dakota has a significant relationship to the transaction before the court. The contract was applied for in South Dakota, and the contract was delivered to the debtors' attorney there. But its interest in contract formation within its borders does not outweigh the significant interest of Iowa regarding the protection of those domiciled in Iowa and their beneficiaries. Ms. Staley's relationship to Iowa is not slight. She was born there and apparently has lived in the Charter Oak area for some time. Exhibit 1, Application. I conclude, therefore, that Iowa law controls on the issue of the effective date of the life policy.

Advance premium receipts can bind insurers to immediate coverage prior to the issuance of an insurance policy. Simpson v. Prudential Ins. Co. of America, 227 Md. 393, 177 A.2d 417, 421 (1962). This is so in Iowa. Hubbard & Spencer v. The Hartford Fire Insurance Co., 33 Iowa 325, 328 (1871) (fire insurance); Reynolds v. Northwestern Mut. Life Insurance Co., 189 Iowa 76, 176 N.W. 207, 208 (1920).

There is more than one type of advance premium receipt, and the type can impact the effective date of life insurance coverage. Simpson v. Prud., 177 A.2d at 421-23. A binding contract of life insurance can exist prior to the issuance of the policy even though coverage may later be denied based on the company's determination of insurability. Reynolds v. Northwestern, 176 N.W. at 209. Staleys cite two South Dakota cases dealing with advance premium or deposit receipts which they contend support their argument that coverage was effective at filing: Sharkey v. Washington Nat'l Ins. Co., 373 N.W.2d 421 (S.D. 1985) and Grandpre v. Northwestern National Life Insurance Co., 261 N.W.2d 804 (S.D. 1977).

The difficulty for debtors in this case, however, is that there was no conditional receipt given by the agent to Staleys in return for the payment of the life premium. A receipt was attached to the "Application for Immediate Annuity Contract." Exhibit 1. It was for the full amount of Staleys' payment to Youngberg, \$18,662.46. The receipt says nothing about when life insurance is effective. There is no evidence of a separate receipt for the life policy, although the language of the life insurance application provides for the possibility of one. The application provides that "Except as provided in the receipt attached to this application, if issued, any policy issued on this application shall not take effect unless the following conditions are met: . . ." (Emphasis added.) The application then sets out the conditions. They are quoted in full in my initial decision. Condition (b) requires that the "policy is delivered to the owner during the lifetime of the person insured under that policy." Nothing in the application's language persuades me that a life insurance contract was in force any earlier than the delivery date of the policy or the issue date if delivered. Regardless of which of those two dates might apply, the policy provided no insurance protection on December 15, 1995, the date of bankruptcy. Company may have advance premium receipts that alter the application's coverage

provisions, but none was shown to be applicable in this case. I, therefore, conclude that on December 15, 1995, Ms. Staley had made an offer to purchase life insurance and had paid an advance premium, but that the offer had not yet been accepted, and no life insurance policy or coverage was in force. The offer not being life insurance under Iowa law, it may not be exempted under Iowa Code § 627.6 (6). Accordingly,

IT IS ORDERED that judgment shall enter that the trustee's objection to Patricia Staley's claim of exemption in the cash surrender value of a life insurance policy with North American Company for Life and Health Insurance is sustained. The claim of exemption is denied.

IT IS FURTHER ORDERED that the judgment shall provide that the trustee's claim of exemption in disposable earnings is sustained. The claim of exemption is denied.

SO ORDERED THIS 10th DAY OF JUNE 1996.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and a judgment by U.S. mail to: John Harmelink, Debtors, John Moeller, Wil Forker, Cynthia Moser and U. S. Trustee.