

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

Ray W. Swarthout and Patricia E.
Swarthout,

Debtor(s).

C/A No. 09-06263-JW

Chapter 13

**AMENDED ORDER REGARDING
CONTINUED ADMINISTRATION
OF CHAPTER 13 CASE¹**

This matter comes before the Court for consideration of the Motion for Designation of Personal Representative, to Act on Behalf of Deceased Debtor in All Matters (the “Motion”) filed by the attorney for Ray W. Swarthout and Patricia E. Swarthout (the “Debtors”). The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(b). Pursuant to Fed. R. Civ. P. 52, which is made applicable to this matter by Fed. R. Bankr. P. 7052 and 9014(c), the Court makes the following findings of fact and conclusions of law:²

FINDINGS OF FACT

1. The Debtors filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on August 24, 2009 (the “Petition Date”). The Debtors filed their Chapter 13 plan (the “Plan”) on the same date.

2. The Plan was confirmed on November 4, 2009.

3. The Schedules filed by the Debtors with the petition indicated that all property was jointly owned and all debts were joint debts. In addition, according to the Debtors’ schedules, they had regular income from Mr. Swarthout’s job as a ranger/starter with Barefoot Golf in addition to his Social Security benefits and pension.

¹ This Order is being amended to correct a typographical error contained on page 3.

² To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent any conclusions of law constitute findings of fact, they are so adopted.

4. Mr. Swarthout passed away on October 28, 2011.

5. On October 7, 2013, counsel for the Debtors filed the Motion. In the Motion, counsel for the Debtors stated that he did not become aware of Mr. Swarthout's death until almost two years later. No explanation was provided regarding why the death of the Mr. Swarthout was not reported earlier to the Court or Trustee.

6. The Motion was served on all creditors and the Trustee, and no objections were filed.

7. On October 8, 2013, counsel for the Debtors filed the Notice of Certification of Plan Completion and Request for Discharge, which was signed by Ms. Swarthout on behalf of both herself and Mr. Swarthout.

8. At the hearing on the Motion, counsel for the Debtors stated that continued administration was required for the sole purpose of completing the joint bankruptcy case. Although counsel for the Debtors did not identify the source, he indicated that Ms. Swarthout's income following her husband's death was sufficient to maintain the full payments due under the Plan and that Ms. Swarthout had in fact now made all of the payments required under the confirmed Plan.

CONCLUSIONS OF LAW

I. Parties Acting on Behalf of a Deceased Debtor for Purposes of Further Administration under Rule 1016

Neither the Bankruptcy Code nor Fed. R. Bankr. P. 1016 provide for the appointment of a third party to be substituted for a deceased debtor for the purpose of exercising the rights, fulfilling the responsibilities, or receiving the benefits provided to a debtor by a Chapter 13 case. Therefore, a third party cannot step into the shoes of a debtor to take actions that must taken by

the debtor personally in accordance with the express language of the Bankruptcy Code, including, as examples, proposing a plan under 11 U.S.C. § 1321, converting a case under 11 U.S.C. § 1307, and modifying a plan under 11 U.S.C. §§ 1323. See Brown, C/A No. 12-07082-jw, slip op. at 8 (Bankr. D.S.C. Mar. 25, 2013) (finding that a personal representative of a debtor's estate cannot file and obtain confirmation of a plan in an individual bankruptcy case following the death of the debtor); In re Shepherd, 490 B.R. 338, 343 (Bankr. N.D. Ind. 2013) (denying requests to substitute the personal representative for the debtor and to allow the personal representative to modify the plan); In re Martinez, C/A No. 13-50438-CAG, 2013 WL 6051203, at *1 (Bankr. W.D. Tex. Nov. 15, 2013) (citing Shepherd, 490 B.R. at 340-41) ("It is not appropriate to substitute a probate estate for a Chapter 13 debtor, nor is there any mechanism in bankruptcy law allowing for this.") As the Court recognized in Brown, the Bankruptcy Code does not authorize bankruptcy courts to appoint individuals as "Special Administrators" to act on behalf of or exercise the rights of a deceased debtors and, thus, a motion seeking the continued administration of a bankruptcy case is more properly titled as "Motion to Approve Continued Administration of Bankruptcy Case" instead of "Motion to Appoint Special Administrator." Brown, C/A No. 12-07082-jw, slip op. at 3 n.2. Instead, in the undersigned's view, the wording of Rule 1016 limits further administration of a deceased debtor's case to completing a case as it existed at the time of the debtor's death. Thus, actions within the scope of further administration would include those administrative or ministerial acts necessary to finish and close the case.

State probate law authorizes the appointment or designation of a personal representative to act on behalf of a deceased debtor, and therefore, it is consistent with state law to recognize a personal representative's standing in a bankruptcy case for the limited purpose of signing

documents and directing debtor's counsel regarding the completion and conclusion of a case pending at the time of death. See S.C. Code Ann. §§ 62-3-103 (“[T]o acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.”) and 62-3-703(a) (providing that the personal representative “has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate”). Therefore, to the extent the Motion seeks recognition of the Debtor's personal representative for the limited purposes described above, it is granted.

II. Continued Administration under Rule 1016

Under Rule 1016, a Court may only authorize further administration of a deceased debtor's Chapter 13 case if such administration is possible and in the best interest of the parties. As this Court noted in In re Gariepy, “any determination of whether further administration of a deceased debtor's Chapter 13 case is possible and in the best interest of the parties under Rule 1016 is fact specific.” C/A No. 11-00827-jw, slip op. at 4 (Bankr. D.S.C. Jan. 3, 2014). Furthermore, a determination regarding further administration “must be made on a case-by-case basis, regardless of whether there is a creditor objection or the Chapter 13 Trustee consents to the relief requested.” Id.

In this case, the surviving joint debtor seeks authority to continue case administration for the sole purpose of concluding and closing the joint case, which appears to include the additional steps of making a request for discharge and obtaining a waiver of the personal financial management course required under 11 U.S.C. § 1328(g). In prior decisions, including individual

cases of deceased debtors, this Court has allowed continued administration of a deceased debtor's bankruptcy case, after notice and a hearing, for the purpose of granting both hardship discharges and waivers of the personal financial management course, if the requirements of the requisite statutes are met. See, e.g., In re Quint, C/A No. 11-04296-jw, slip op. (Bankr. D.S.C. Aug. 16, 2012) (order granting hardship discharge); In re Frankie Lemuiel Dallas and Linda Kay Hart Dallas, C/A No. 09-08702-jw, slip op. (Bankr. D.S.C. Sept. 16, 2013) (order granting exemption from personal financial management course).

Recognizing the usual close nexus in property and debts between husband and wife and the benefits and reduced costs of administering cases together, Congress has specifically provided for joint cases, allowing husbands and wives to administer their cases jointly by combining income and expenses and treating both separate and joint debts together even though the filing of the joint Chapter 13 petition technically creates two separate bankruptcy estates. See In re Herrmann, C/A No. 10-06523-JW, 2011 WL 576753, at *8 (Bankr. D.S.C. Feb. 9, 2011) (citing In re Bunker, 312 F.3d 145, 150 (4th Cir. 2002)) (“[I]t must be noted that the filing of a joint petition creates two separate bankruptcy estates.”) In light of the Bankruptcy Code's express provision for joint cases, further administration appears possible where a surviving joint debtor has the ability to complete all payments due under the originally confirmed plan to the discharge stage of the case using the assets of the deceased debtor and/or the income or assets of the surviving joint debtor, thereby allowing for the joint debtors' plan to be fully performed and satisfied. Such continued administration would include making plan payments pursuant to the

previously confirmed plan and completing those incidental requirements related to seeking discharge under 11 U.S.C. § 1328(a) for both debtors, including the deceased debtor, and closing the case.

While the Court is concerned about the failure to timely report the death of Mr. Swarthout and the delay in requesting authority for continued administration, considering the facts of this case, the Court will not deny the request. However, in future cases where the request for continued administration is significantly delayed, the Court will require an adequate explanation for the delay and consider denial of the relief requested as well as the denial of other benefits from the bankruptcy case.

Considering the full payment in accordance with the terms of the Debtors' plan confirmed prior to the death of the joint debtor and the failure of any creditor or the Trustee to object, it appears that continued administration is in the best interest of all parties and further administration is possible for the limited purpose of concluding and closing the joint case. Therefore, the Motion is granted to that extent.

CONCLUSION

Based on the record before the Court, it is therefore,

ORDERED that the Motion is GRANTED to the extent it seeks recognition of Ms. Swarthout as the personal representative of Mr. Swarthout for the limited purpose of signing documents and directing Debtors' counsel regarding the actions necessary for the completion and conclusion of this case; it is further

ORDERED that the Motion is GRANTED to the extent it seeks to continue administration of the Chapter 13 case to allow the personal representative and joint Debtor, Ms. Swarthout, to request discharge and waiver of the personal financial management course for the

deceased Debtor and other incidental acts consistent with the confirmed plan for the limited purpose of concluding and closing the joint case.

AND IT IS SO ORDERED.

**FILED BY THE COURT
01/14/2014**



A handwritten signature in cursive script that reads "John E. Waites". The signature is written in black ink and is positioned above a horizontal line.

US Bankruptcy Judge
District of South Carolina

Entered: 01/14/2014