

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 15-12507 )  
 )  
RICHARD FREDERICK HAMBROCK )  
 )  
Debtor )  
 )  
 )  
MARK A. WARSCO, Trustee )  
 )  
Plaintiff )  
 )  
vs. )  
 )  
RICHARD FREDERICK HAMBROCK )  
 )  
Defendant )

NOT INTENDED  
FOR  
PUBLICATION

PROC. NO. 16-1003

**DECISION AND ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

On May 25, 2016.

Shortly before filing bankruptcy, the debtor changed the beneficiary on his life insurance policy from his girlfriend to his son, thereby transforming it from an asset which could be reached by creditors to one which is fully exempt under state law, see, I.C. §§27-1-12-14 and 27-2-5-1(c), and, as such, beyond the reach of creditors. The trustee asserts that this change was done with the intent to hinder, delay or defraud creditors, warranting the denial of debtor’s discharge. See, 11 U.S.C. § 727(a)(2), (7). The matter is before the court on the debtor/defendant’s motion for summary judgment together with the plaintiff’s response thereto.

The defendant argues that changing the beneficiary on a life insurance policy which is owned by debtor, and continues to be owned by the debtor, does not constitute a transfer; so § 727(a)(2) does not apply. That is not necessarily so. “Transfer,” under bankruptcy law, means “each mode,

direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or an interest in property.” 11 U.S.C. § 101(54)(D). That expansive definition is broad enough to include converting a non-exempt asset into an exempt one. See e.g., In re Carey, 938 F.2d 1073 (10th Cir. 1991); Matter of Smiley, 864 F.2d 562 (7th Cir. 1989); In re Davidson, 178 B.R. 544 (S.D. Fla. 1995); In re Dunbar, 313 B.R. 430, 436 (Bankr. C.D. Ill. 2004); In re Orr, 2008 WL 244168 \*3 (Bankr. C.D. Ill. 2008). Moreover, some courts have held that changing a beneficiary on a life insurance policy may constitute a transfer. See, In re Wolensky’s Ltd. Partnership, 163 B.R. 615, 627 (Bankr. D. D.C. 1993); In re John Hatton, Inc., 104 B.R. 705, 707 (Bankr. W.D. Pa. 1989); In re Anderson Industries, Inc., 55 B.R. 922, 926 (Bankr. W.D. Mich. 1985). Finally, § 727(a)(2) is not limited to “transfers” of property. It also encompasses the removal, destruction, mutilation and concealment of property. Regardless of whether a change in beneficiary constitutes a transfer, it could well constitute a “removal” of property in which previously non-exempt assets were placed beyond the reach of creditors. See, 6-727 Collier on Bankruptcy ¶ 727.02 (debtors’ appropriation of proceeds of a settlement for their own use constitutes removal). See also, Wolensky’s Ltd. Partnership, 163 B.R. at 626 (“the relevant inquiry . . . is ‘whether the debtor [or person making the conveyance] has put some asset beyond the reach of creditors which would have been available to them but for the conveyance’”) quoting Headen v. Miller, 190 Cal. Rptr. 198, 202 (Cal. Ct. App. 1983).

Defendant’s motion for summary judgment is DENIED.

SO ORDERED.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court

Entered at Fort  
Wayne, Indiana, on  
May 25, 2016.