

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Honorable Howard R. Tallman**

In re:)
)
GARY AUDRIAN FULLER and) **Case No. 05-18831 HRT**
PATRICIA BAYENS FULLER,)
) **Chapter 13**
Debtors.)
_____)

ORDER ON STATEMENT TO OBTAIN DISCHARGE

This case comes before the Court on the *Statement on Behalf of Deceased Debtor to Obtain Discharge Pursuant to 11 U.S.C. § 1328* (docket #114) filed by Debtors' counsel.

The case was filed in 2005. Patricia Fuller passed away in 2008 and the Court received notice of her passing. Mr. Fuller continued making the full payments called for under the Debtors' confirmed plan and has now completed all plan payments. The Court has reviewed this matter due to the filing of an application for discharge on behalf of a deceased individual.

Certainly, bankruptcy relief under chapter 13 is unavailable to decedents' estates. 11 U.S.C. § 109(e); *see In re Walters*, 113 B.R. 602, 604 (Bankr. D. S.D. 1990) ("Courts have uniformly supported the contention that the Bankruptcy Code's definitions of "person" and "debtor" exclude insolvent decedents' estates.") (citing *In re Estate of Whiteside by Whiteside*, 64 B.R. 99, 102 (Bankr. E.D. Cal. 1986); *In re Estate of Patterson*, 64 B.R. 807, 808 (Bankr. W.D. Tex. 1986); *Matter of 299 Jack-Hemp Associates*, 20 B.R. 412, 413 (Bankr. S.D. N.Y. 1982); *Matter of Jarrett*, 19 B.R. 413, 414 (Bankr. M.D. N.C. 1982); *In re Brown's Estate*, 16 B.R. 128, 128 (Bankr. D. D.C. 1981)).

However, this case was properly filed during Mrs. Fuller's lifetime and the Bankruptcy Rules specifically authorize the Court to continue administration of a reorganization case following the death of a debtor where "further administration is possible and in the best interest of the parties." FED. R. BANKR. P. 1016. In this case, the Court allowed the case to proceed following notification of Mrs. Fuller's death and Mr. Fuller has now completed all of the required payments.

Although, Rule 1016 stops short of giving the Court specific authorization to discharge the debts of a decedent, issuance of a discharge is the natural and contemplated result of the completion of payments under a chapter 13 plan. Moreover, the Court in *In re Perkins*, 381 B.R. 530 (Bankr. S.D. Ill. 2007), has done a complete and thoughtful analysis of this very question. That court points to the legislative history of § 541, which says

if the debtor dies during the case, only property exempted from property of the estate or acquired by the debtor after the commencement of the case and not included as property of the estate will be available to the representative of the debtor's probate estate. The bankruptcy proceeding will continue *in rem* with respect to property of the [e]state, and the discharge will apply in personam to relieve the debtor, and thus his probate representative, of liability for dischargeable debts.

Id. at 534 (citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess., at 367-68 (1977); S.Rep. No. 95-989, 95th Cong., 2d Sess., at 82-3 (1978), U.S.Code Cong. & Admin.News 1978, pp. 5963, 6322-24, 5787, 5868-69.).

This Court is in agreement with the *In re Perkins* analysis and finds that Mrs. Fuller's liability should be discharged in this chapter 13 proceeding to the same extent as if she had remained living throughout the pendency of the case. Therefore, it is

ORDERED that the Clerk of the Court shall issue a discharge with respect to Patricia Fuller in this case.

Dated this 11th day of March, 2010.

BY THE COURT:


Howard R. Tallman, Chief Judge
United States Bankruptcy Court