

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky. Case No. 04-42742-NCD
Chapter 7

Dianne LaFleur,

Debtor.

VERIFIED NOTICE OF HEARING AND MOTION
ON TRUSTEE'S OBJECTION TO CLAIMED EXEMPT PROPERTY

TO: Debtor; Debtor's attorney; the United States Trustee and other parties in interest.

1. Timothy D. Moratzka ("Trustee"), by its undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this objection at 2:30 p.m. on August 4, 2004, in Courtroom No. 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota before the Honorable Nancy C. Dreher, or as soon thereafter as counsel may be heard.

3. Any objection to the relief requested herein must be filed and delivered not later than July 30, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than July 26, 2004, which is seven (7) days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R.Bankr.P.5005, Local Rule 1070-1, and applicable rules. This is a core proceeding. The petition commencing this Chapter 7 case was filed May 13, 2004 and the case

is now pending in this Court.

5. This motion is filed pursuant to Bankruptcy Rule 4003(b) and Local Rule 4003-1 and 9013 et seq. and Trustee objects to the Debtor's claim that the following property is exempt under the applicable exemption statute:

A)	403(b) retirement	
	MSA § 550.37 subd.24	
	Scheduled Value:	\$40,000.00
	Amount Claimed Exempt:	\$40,000.00

6. Trustee asserts the 403(b) plan is not exempt for the following reasons. The 403(b) plan is not ERISA qualified because it does not “provide that benefits under the plan may not be assigned or alienated.” 29 U.S.C. § 1056(d)(1); *In re Van Nastrand* 183 B.R. 82 (Bky. D.N.J. 1995). The 403(b) plan is property of the estate under 11 U.S.C. § 541. The 403(b) plan assets are not necessary for support of the Debtor, or payable only on account of illness, disability, death, age or length of service and should not be exempt. It is not known if the 403(b) plan is an ERISA-qualified plan or a trust under 11 U.S.C. Sec. 541(c)(2). *See In re Adams*, 302 B.R. 535 (6th Cir. B.A.P. 2003).

WHEREFORE, Trustee respectfully moves the Court for an order sustaining the Trustee's motion to Debtor's claimed exemption listed herein and for such other relief as may be just and equitable.

Dated: July 14, 2004

MACKALL, CROUNSE & MOORE

By /e/Patrick C. Summers
Timothy D. Moratzka (Atty No. 75036)
Patrick C. Summers (Atty. No. 028841X)
Attorneys for Trustee
1400 AT&T Tower
Minneapolis, Minnesota 55402
(612) 305-1400

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VERIFICATION

I, Timothy D. Moratzka, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on: July 14, 2004

Signed: /e/Timothy D. Moratzka
Timothy D. Moratzka

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

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Dianne LaFleur

Debtor.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Cheryl DeBettignies, employed by Mackall, Crouse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Verified Notice of Hearing and Motion on Trustee's Objection to Claimed Exempt Property** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

(Attorney for Debtor)
Timothy C. Theisen
229 Jackson Street
Suite 205
Anoka, MN 55303

(Debtor)
Dianne LaFleur
730 Oakwood Drive
Anoka, MN 55303

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: July 14, 2004

By /e/ Cheryl DeBettignies

TDM/l dj#709286v1

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ORDER

The above-entitled matter came before the Court for hearing on August 4, 2004, on the motion of Timothy D. Moratzka, Trustee for the above-referenced Debtor, objecting to the exemption claim of the Debtor in the 403(b) retirement plan claimed under MSA § 550.37 subd. 24. Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds grounds for sustaining the Trustee's objection.

NOW, THEREFORE, IT IS HEREBY ORDERED that the 403(b) retirement plan claimed by Debtor under MSA § 550.37, subd. 24 is not exempt and shall be administered as property of the estate.

Dated: _____

Honorable Nancy C. Dreher
United States Bankruptcy Judge