

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-43339

Diane Layette McKinney,

Debtor.

NOTICE OF MOTION AND MOTION
OBJECTING TO EXEMPT PROPERTY

TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTOR AND HER ATTORNEY:

1. Dorraine A. Larison, Trustee of the bankruptcy estate of the above-named debtor, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 a.m. on September 29, 2004, in Courtroom No. 7 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 22, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than September 17, 2004, which is ten (10) days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION 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. §§ 157 and 1334, 11 U.S.C. § 522, Bankruptcy Rule 5005 and 9014, Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on June 14, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 522, and Bankruptcy Rule 4003 and Local Rule 4003-1(a). This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9001-6 and 9013-1 to 9013-5. Movant requests relief with respect to debtor's claims for exemption.

6. Debtor has claimed as exempt the following assets which the trustee objects to as follows:

- a) Cash on Hand claimed exempt under Minn. Stat § 550.37, subd. 13;
- b) Checking Account claimed exempt under Minn. Stat. § 550.37, subd. 13;
- c) Computer claimed exempt under Minn. Stat. § 550.37, subd. 4(b); and
- d) VCR claimed exempt under Minn. Stat. § 550.37, subd. 4(b).

7. The trustee objects to the debtor's claims of exemption on the following basis:

a) The debtor has claimed an exemption for cash under a statute that provides for the exemption of a portion of wages. The statute does not provide for the exemption of the wages once the wages have been turned into cash.

b) The debtor has claimed the funds in the checking account under a statute that provides for the exemption of a portion of wages. The statute provides that wages placed in a financial account are exempt for up to 20 days. The debtor has not shown that the funds in the checking account are from wages earned in the previous 20 days. In addition, if the funds in the account are from wages, the debtor may claim only 75% of the funds exempt. The debtor has claimed 100% of the funds exempt.

c) The computer is not the type of asset which is a household good as defined under the statute.

d) The VCR is not the type of asset which is a household good as defined under the statute.

WHEREFORE, Applicant moves the court for an order sustaining trustee's objection to claimed exempt property and such other relief as may be just and equitable.

Dated this 18th day of August, 2004.

/e/ Dorraine A. Larison
Dorraine A. Larison
I.D. No. 203609
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
1010 West St. Germain
Suite 600
St. Cloud, MN 56301
(320) 252-4414
Attorneys for Trustee

VERIFICATION. I, Dorraine A. Larison, the movant declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 18, 2004

/e/ Dorraine A. Larison
Dorraine A. Larison, Trustee

GP:1616137 v1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
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Diane Layette McKinney,

UNSWORN CERTIFICATE OF SERVICE

Debtor.

I, Jean M. Eisenschenk, declare under penalty of perjury that on August 18, 2004, I mailed the following documents:

NOTICE OF MOTION AND MOTION OBJECTING TO EXEMPT PROPERTY AND PROPOSED ORDER

by first class mail postage prepaid to each entity named below at the address stated below for each entity:

UNITED STATES TRUSTEE
1015 US COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

ERICH M RAMSEY
THE RAMSEY LAW FIRM P C
P O BOX 201347
ARLINGTON TX 76006

WELLS FARGO BANK N A
C/O MCCALLA RAYMER ET AL
BANKRUPTCY DEPARTMENT
1544 OLD ALABAMA ROAD
ROSWELL GA 30076

DIANE LAYETTE MCKINNEY
10747 - 302ND AVE N W
PRINCETON MN 55371

Executed on: August 18, 2004

/e/ Jean M. Eisenschenk
Jean M. Eisenschenk
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
Suite 600
1010 West St. Germain Street
St. Cloud, MN 56301

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-43339

Diane Layette McKinney,

ORDER

Debtor.

At Minneapolis, Minnesota, _____, _____.

Upon the Objection to Claimed Exempt Property filed by the Trustee and upon all the files and records of the proceedings herein,

IT IS ORDERED:

1. The following assets of the debtor are not exempt:
 - a) Cash on Hand;
 - b) Checking Account balance;
 - c) Computer; and
 - d) VCR.

Nancy C. Dreher
UNITED STATES BANKRUPTCY
JUDGE