

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-44186

John Carlos DiPetrillo and
Stacy Lynn DiPetrillo,

NOTICE OF MOTION AND MOTION
OBJECTING TO EXEMPT PROPERTY

Debtors.

TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTORS, AND THEIR
ATTORNEY:

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

2. The Court will hold a hearing on this motion at 9:30 a.m. on October 20, 2004, in Courtroom No. 8 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 October 15, 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 October 11, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays).

**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 July 28, 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 debtors' claims for exemption.

6. Debtors have claimed as exempt the following assets which the trustee objects to as follows: 2004 Melroe Bobcat T190, Kincade hydroseeder, and Trailer all claimed exempt under MSA § 550.37 subd. 6.

7. The trustee objects to the debtors' claims of exemption on the following basis: The debtors testified that they are no longer operating a business. The debtors testified that Mr. DiPetrillo allows his current employer, Buffalo Bituminous, to use the items described above in return for a payment to him based on the amount of use. In essence, the debtors are renting these items to Mr. DiPetrillo's current employer. As such, the items are not tools of Mr. DiPetrillo's trade.

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 29th day of September, 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: September 29, 2004

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

GP:1629514 v1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-44186

John Carlos DiPetrillo and
Stacy Lynn DiPetrillo,

UNSWORN CERTIFICATE OF SERVICE

Debtors.

I, Jean Eisenschenk, declare under penalty of perjury that on September 29, 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

CHARLES E PASCHKE
ATTORNEY AT LAW
PO BOX 189
HOWARD LAKE MN 55349

JOHN CARLOS DIPETRILLO
8787 WEST 50TH STREET NW
ANNANDALE MN 55302

STACY LYNN DIPETRILLO
8787 WEST 50TH STREET NW
ANNANDALE MN 55302

Executed on: September 29, 2004

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

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John Carlos DiPetrillo and
Stacy Lynn DiPetrillo,

ORDER

Debtors.

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 debtors' 2004 Melroe Bobcat T190, Kincade hydroseeder, and Trailer are not exempt.

Robert J. Kressel
UNITED STATES BANKRUPTCY
JUDGE