

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)	Chapter 7
)	BKY Case No. 04-44561-NCD
Douglas G. Miller,)	
)	
Debtor(s))	<u>VERIFIED NOTICE OF HEARING</u>
)	<u>AND MOTION OBJECTING TO</u>
)	<u>CLAIMED EXEMPT PROPERTY</u>

TO: The United States Bankruptcy Court, the United States Trustee, the debtor, the debtor's attorney, and all parties who requested notice under Bankruptcy Rule 2002 (none):

1. Julia A. Christians, Trustee herein, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1071-1. This motion is filed pursuant to Bankruptcy Rule 9014 and Local Rules 9013-1 through 9013-5. This proceeding arises under 11 U.S.C. § 522 and Local Rule 4003-1(a).

3. The Court will hold a hearing on this objection on November 3, 2004, at 10:30 a.m. in Courtroom No. 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or as soon thereafter as counsel can be heard.

4. Any entity opposing the motion under Local Rule 9013-2 is required to file and serve a response, including a memorandum of facts and law and any opposing affidavit, not later than October 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 25, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **If no**

response is timely served and filed, the Court may grant the relief requested without a hearing.

5. The undersigned trustee hereby objects to the debtor's claim that the following property is exempt under the applicable exemption statute: household goods and furnishings (listed at a value of \$2,000.00) and wearing apparel (listed at a value of \$200.00).

6. The objection is made for the following reason:

Debtor claimed the household goods and furnishings exempt under M.S.A. §550.37 subd. 4(b) to the extent of \$2,000.00 and the wearing apparel exempt under subd. 4(a) to the extent of \$200.00.

Within days prior to his filing, Debtor liquidated various accounts (Debtor filed on August 16 and testified he liquidated the assets in mid-August), collecting proceeds of a disclosed amount of \$114,696.20. To account for the disposition of said funds, Debtor provided the notes attached hereto as Exhibit "A". While raising numerous other issues, for purposes of the question of allowance of claimed exemptions, Debtor's representations rebut his own scheduled valuations of personal property. Debtor contends he purchased over \$15,000.00 in new items for his home, including a \$1,277 entertainment center and more than \$3,000.00 in new computer, electronic and stereo equipment that Debtor failed to disclose in his schedules. Since it was new at the time of the filing, Debtor has no credible "depreciation" argument regarding such values. Assuming, as one logically must, that even before the spending spree Debtor owned the standard amount of household goods and furnishings commensurate with a \$325,000.00 home such as Debtor resides in, Debtor undervalued his property by roughly \$20,000.00 to \$30,000.00 and has property far in excess of the maximum exemption limits.

Similarly, Debtor contends he purchased, again, immediately before the filing, over \$900.00 worth of clothing. His sworn schedules state he owns \$200.00 worth of clothing. Even if that had

been the case before the zealous pre-bankruptcy planning, it clearly was not accurate as of the date the schedules and statements were signed and sworn to under oath.

There is no basis for a contention that Debtor holds only a half interest with his non-filing spouse in all the new items, since it is also his representation that he gave his spouse her share of the stock he sold and that the purchases were made strictly from the proceeds he retained.

Given the inaccuracy of the schedules, the reasonable inference regarding actual values of the property in question and the contradictory representations made by Debtor, it is appropriate for the Court to deny Debtor's exemptions and to allow sale of the personal property by the estate. At a minimum, Debtor should be limited to no more than the \$2,000 value he swore to, and the balance of the auction proceeds and/or appraised value of the property ordered turned over to the estate.

Dated: October 13, 2004

/e/ Julia A. Christians
Julia A. Christians, Trustee
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

VERIFICATION

Julia A. Christians, being duly sworn, says that she is the Chapter 7 Trustee in this action, that she has read this Verified Notice and Objection To Claimed Exempt Property and that it is true of her own knowledge, to the best of her information.

/e/ Julia A. Christians
Julia A. Christians



— Out —

Form of Pay	Vendor	Desc	Am't
C	Marshall Field	Watch Band	16.99
C	Marshall Field	Dress shirts	19.98
C	Marshall Field	Dress shoes (BRO)	83.97
C	Marshall Field	Dress shirts	29.00
CK	Home Depot	Bldg. - Chock Rail	65.24
Cart.	Assoc. BK	Mortgage	10,000.00
CK	Marshall Field	Dress shoes (BK)	88.97
CK	Marshall Field	Dress Slacks	29.99
CK	J. C. Penney	Dress slacks, P.D.	110.98
CK	Sears	Water F. Hoses - Repairs	69.20
Cart	Assoc. BK	Mortgage	24,350.00
CA	Rickys Wood + Landscape	Cut + dispose of diseased tree	1,250.00
CK	Center Point Energy	GAS	88.20
CK	Launch Del	Dry cleaners	22.50
CK	Retainers Npt.	Card	8.06
CK	Lathrop Paint	House Paint, Primer, Ceiling	194.81
CK	One Stop Auto	Auto Repair	427.92
CK	IBEW 292	Med/Dental Ins	649.00
C	Carpets + color tile	Hall tile	32.22
C	Cyle Day	Countertop install, sink cut etc	3,500.00
C	Home Depot	Mower	384.51
Cart	News, City Tax	House tax	1,397.03
Cart	Maytag Store	Stove/over/Micro Replac	2,346.20
Cart	Fed. U.S. Treasury	Est. Tx	10,000.00
Cart	MN. Revenue	Est. Tx	3,600.00
Cart	Am. Fam. Ins.	Property Ins	751.60

OUT

Form of Pay	Vendor	Desc.	AMT
cert	Am. Fam.	CAR Ins (Buick)	292.45
cert	Am. Fam	CAR Ins (Olds)	340.82
cert	J.C. Penney	Credit card pay	95.02
cert	Retro Arts Nat	Credit card pay	434.34
cert	Home Depot	Credit CARD PAY	321.51
cert	AAA Financial	Credit CARD PAY	600.00
cert	U.S. Bank (VISA)	Credit CARD PAY	380.15
cert	Barbi Miller	1/2 of Jan's STK	21,022.00
cert	Maytag	Credit CARD PAY	424.42
ck	Allina Hosp	Med. pay	221.60
cert	MBNA America	Credit CARD PAY	600.00
ck	Malin Greenberg	Atty	3,209.00
ck	O'CONNOR Gearty	CRA TAX	750.00
ck	Wells Fargo Auto Fin.	(2) CAR pay (Fuel Payments)	209.10
ck	U.S. NAT (VISA; ^{BUS.} Doug)	Cred. & CARD	688.46
ck	Great Clips	Hair	8.99
ck	Holiday	GAS	32.16
ck	Allina Hosp	Med pay	26.40
cash	Ricks MKT.	GROCERIES	94.65
C	Feel Fab	Medical Socks	480.00
C	MARSHALL Fields	CARPET TAKE UP + DISPOSE	1,496.80
C	MARSHALL Fields	CHAIR	914.84
C	Best Buy	tuner, SPKRS, WIRE	1,032.35
C	Holiday	GAS	17.50
C	MARSHALL Fields	Furniture care	12.77
C	McDon	Lunch - Job search	6.50

Out

Form of Pay Vendor Desc Amt

CK	U-NEDA GARAGE DOOR CO	Replace Broken Springs	160.-
C	Associated	9/10 1/2 House Mort.	569.77
C	IBEW 292	9/04 Med/Dental Ins	649.00
C	ASSOC BK	9/04 House Pay	1139.53
C	U. S Bank (Doug's Visa)		69.99
C	NOM	Ext. Ctr. - Furniture	1277.98
C	Best Buy	CAM, Printer, TV, CASE	777.40
C	Best Buy	Computer + CASE	1533.58
C	Vargan Anderson	Installation of Oven/Micro	400.00
C	Home Depot	Camps, wood shelling, Cords	437.22
C	Am. Fam. Ins	#1023337-3	757.50
C	Am. Fam. Ins	#U062991-0	399.00
C	Maytag Store	Cleaner for ^{New} stove top	8.51
C	Job Lot, Gas, Kg.	MISC	1000.00
C	Q.R.S. Inc	Driveway Repair	1340.-
C	Erick Peterson	Cable Repair: Hall to las	150.00
C	Resume' Preparation/Printing/maulings		540.00
C	ASSOC. BK - Final Mort. down		10,450.00

193

21,659.98

Out total →

114,696.20

Job Search Lunch		3.49
Holiday GAS		22.75
Managers	Sean Budak / Brattman	20.84
Managers	TRANSITION Piece (Sunday Pm)	10.65
Home Depot	Threshold / Sealer	82.50
Red Rooster	Lunch Review	16.75 (with tip)
Home Depot	Bed / Trunk / Patch	63.76
All Season	Bed / Food	21.80
Home Depot	Patch - Drive	22.33
Home Depot	Crack & Sealer	22.11
Home Depot	Stain / Patch	10.44
Tires Plus	New TIRE	84. ⁰⁰
Home Depot	Cleaner / Poly	8.52
Home Depot	Screws for base plate	3.83
Home Depot	Sealer PAPERS	21.17
Kinco	Sealer update	22.61
AT&T	cell phone	57.81
Home Depot	Sealer	42.50
B's	Lunch Strategies	20.37
Home Depot	PAINT Supplies	16.62
Home Depot	Sealer	21.25
Holiday	GAS	16.52
Publix	Lunch	20.20
Home Depot		40.16
GAS		22. —
9/15 GAS		24. —

728.78 not
9/17/04

Dr

out on pg 142

16,058.89	IRA
920.65	Roth
25,673.03	Roth
42,043.63	Joint STK
30,000.00	401K

total 114,696.20

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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) Case No. 04-44561-NCD
Douglas J. Miller,)
)
Debtor.)

UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on October 13, 2004, I mailed copies of the attached **Notice Of Hearing And Motion Objecting to Claimed Exempt Property; and proposed Order** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

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

Malin D. Greenberg
600 S. Hwy 169, Suite 1525
St. Louis Park, MN 55426

Douglas Glenn Miller
18730 – 27th Avenue N
Plymouth, MN 55447

Kevin J. Dunlevy
Beisel & Dunlevy, PA
Attorneys for Associated Bank Minnesota, NA
282 US Trust Building
730 Second Avenue South
Minneapolis, MN 55402

Executed on: October 13, 2004

/s/ Sarah L. Fortin
Sarah L. Fortin, Legal Secretary
Lapp, Libra, Thomson, Stuebner &
Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612/338-5815

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DISTRICT OF MINNESOTA

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)	BKY Case No. 04-44561-NCD
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)	
Debtor(s))	
)	

ORDER RESPECTING OBJECTION TO CLAIM OF EXEMPTION

The objection of the trustee to the debtor's claim that the following property is exempt under M.S.A. §550.37 subd. 4(a) and (b) and subd. 24: household goods and furnishings and wearing apparel, came duly on for hearing on November 3, 2004. Appearances were as noted in the record.

Upon said objection and for cause shown, and upon all the files, records, and proceedings herein,

IT IS ORDERED,

That the debtor's claims of exemption in all household goods and furnishings and wearing apparel are hereby disallowed and said items, or their appraised value, or the proceeds of their sale are property of the bankruptcy estate.

Dated:

Nancy C. Dreher
United States Bankruptcy Judge