

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case No. 04-44918-RJK
Chapter 7

Fred Arthur Fedora,

Debtor.

MEMORANDUM OF LAW

The debtor, Fred Arthur Fedora, submits this memorandum of law in opposition to the motion of the case trustee, Julia Christians, objection to his claim of exemptions.

FACTS

The debtor duly filed for protection under Chapter 7 of the Bankruptcy Code on September 2, 2004. He appeared with counsel at the meeting of creditors on October 7, 2004.

As set forth in his petition and schedules, the debtor has limited means and virtually no liquid assets. He related to the trustee at the meeting of the creditors that Liberty Credit received an involuntary preference payment within 90 days of his filing.

On October 23, 2004, the debtor amended his Schedule C herein to elect the federal exemptions under 11 U.S.C. 522(b)(2), rather than the state exemptions from the original Schedule C. Based upon his limited assets and means, debtor and counsel had not, precisely, anticipated his claim under the state exemptions would be a problem.

The total value of the debtors available assets (\$6,285.83), including the \$1,710.83 involuntary preference to Liberty Credit, is less than the federal carry over exemption allowance under 11 U.S.C. 522(d)(5), but the debtor also exempted a qualified retirement benefit from Flint Inc. under 11 U.S.C. 522(d)(10)(E) and one vehicle and household goods under 11 U.S.C. 522(d)(2) and 11 U.S.C. 522(d)(3), respectively.

ARGUMENT

A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed (FRBP 1009). The debtor is also entitled to the better of the state or federal exemptions, with the selection of the better exemption system to be made for the debtor by the court, if the debtor is unsure or elects both the state or federal exemptions. In re Werner, 31 B.R. 418 (Bkrcty D. Minn. 1983)

In construing the exemption laws, the debtor's financial survival and the social policies underlying bankruptcy, including an effort to keep the bankrupt from becoming a public charge, needs to be kept in mind. In re Dreuttel, 302 B.R. 26, reversed 309 B.R. 320 (Bkrcty D. Minn. 2003) and In re Sohn, 300 B.R. 332 (Bkrcty D. Minn. 2003). Although the debtor is employed, his earnings are barely enough, lacking no unanticipated "rainy days" to stay solvent.

Pursuant to Minn. Stat. 550.371, subd. 1, a Minnesota debtor may elect the federal exemptions, as an alternate to the state exemptions. See also In re Martin, 297 B.R. 750 (Bkrcty D. Minn. 2003). In the instance case, the carry over exemption under the federal system permits him to exempt his spare vehicle of limited value (1989 Ford Aerostar) and the involuntary transfers.

Also, since petitioner does not have access to his qualified pension plan proceeds through Flint Inc. under retirement, his elected federal exemption under 11 U.S.C. 522(d)(10)(E) is permitted by Patterson v. Shumate, 504 U.S. 753 (1992).

Respecting the involuntary transfer to Liberty Credit, the debtor asserts that all transfers within 90 days prior to filing this case can be claimed as exempt and avoided pursuant to 11 U.S.C. 522 (f) (g) and (i) and 11 U.S.C. 547(f). The debtor's financial position was devastated by the levy of Liberty Credit upon his credit union account. As much as anything else, that is what motivated his seeking bankruptcy protection at this time. It is the debtor's understanding that it is the essence

of an involuntary payment to a creditor that it not be in the ordinary course of business, and is then protected. See In re Holdway, 83 B.R. 507 (Bkrcty E.D. Tenn. 1988).

For all these reasons, the debtor respectfully requests that the motion of the case trustee to disallow his exemptions be denied.

Dated: October 25, 2004.

Respectfully submitted,

/s/ James C. Skoog
James C. Skoog, Atty #161688
Attorney for Debtor
151 Silver Lake Rd., #10
New Brighton, MN 55112
(651) 746-0406

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DISTRICT OF MINNESOTA**

In Re:

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ORDER RESPECTING OBJECTION TO CLAIM OF EXEMPTION

The above-entitled matter came for hearing on November 3, 2004.

THIS CAUSE coming to be heard on the motion of the case trustee, Julia Christians, the Court having jurisdiction, and the Court having been advised in the premises, including the debtor's Amended Schedule C filed October 23, 2004, electing the federal exemptions under 11 U.S.C. Section 522(b)(2), rather than the state exemptions cited in his original Schedule C;

IT IS HEREBY ORDERED, that the case trustee's request to disallow the debtor's claims for exemptions, including the 1989 Ford Aerostar and \$1,710.83, collected involuntarily by Liberty Credit from the debtor within 90 days of debtor's Chapter 7 petition herein, is denied.

Dated:

Hon. Robert J. Kressel
United States Bankruptcy Judge

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UNSWORN CERTIFICATE OF SERVICE

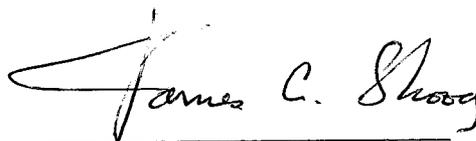
I, James C. Skoog, declare under penalty of perjury that on October 25, 2004, I mailed copies of the attached Memorandum of Law and proposed Order Respecting Objections to Claim of Exemption, and Proof of Service by first class mail postage prepaid to each entity named below at the address stated:

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

Julia A. Christians, Trustee
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402

Fred Arthur Fedora
7438 Taylor Street N.E.
Fridley, MN 55432

Executed on: October 25, 2004



James C. Skoog, Atty #161688
151 Silver Lake Rd., #10
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(651) 746-0406