

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bankruptcy No. 04-60106

Daniel S. Miller,

Debtor.

**RESPONSE TO OBJECTIONS
OF GARY HOPER AND JOHN SPINA TO CLAIMED EXEMPTIONS**

Comes now the Debtor, Daniel S. Miller, and for his response to the objections of Gary Hoper and John Spina to claimed exemption, the Debtor states as follows:

1. The Debtor has claimed the \$13,000.00 worth of farm equipment as exempt. The amount the Debtor is entitled to exempt is a total of \$13,000.00 under Minn. Stat. Sec. 550.37, Subd. 5. Hoper and Spina bear the burden of proving that the Debtor is not entitled to the claimed exemption.

The Debtor claimed this farm equipment and supplies as exempt under Minn Stat. Sec. 550.37, Subd. 5, which provides in part:

Farm machinery and implements used in farming operations by a Debtor engaged principally in farming, livestock, farm products and standing crops not to exceed \$13,000.00 in value.

The described items clearly qualify as exemptible items under Minn. Stat. Sec. 550.37, Subd. 5.

Hoper and Spina object to the claimed exemptions because they believe that the Debtor is not engaged in farming. The Debtor works as a trucker. However, the fact that the Debtor has off-farm income does not mean he is not a farmer for exemption purposes. It is almost impossible for a small farmer to subsist without outside employment. See In re LaFord, 45 B.R. 199 at 200 (Bky.Minn 1984). The Debtor has historically had a farming operation as a result of the Conservation Reserve Program. The Conservation Reserve Program constitutes farming.

The Debtor, in the tax year 2003 had farm income and farm expenses. The Court must take into account the intensity of the Debtor's past farming activities and the sincerity of his intention to continue farming, as well as evidence that the Debtor is legitimately engaged in a trade which currently and regularly uses the specific implements or tools exempted. See In re LaFord, 791 F.2d. 623 (8th cir. 1986). The Debtor used the farm equipment in the past and intend to utilize the equipment in the future in his farming operation.

2. Hoper and Spina object to the Debtor's claimed Homestead. The objection does not claim that the Debtor does not meet the requirements of M.S.A. 510.01 et seq. because there is no basis in law or fact to deny the claimed exemption. The Property claimed exempt constitutes the Debtor's residence and is comprised of less than 160 acres of land and has a value of less than \$500,000. None of these items are disputed.

A Contract for Deed was entered into between Daniel S. Miller and G. Ronald Guttu and Jeanette Guttu dated October 1, 1999, filed as Document #573176 with the Polk County Recorder. An Assignment of Contract for Deed and a Quit Claim Deed was prepared and executed on June 16, 2001, from Daniel Miller to Daniel Miller and Gayla R. Gervais, as joint tenants.

The Contract for Deed was for \$220,000.00, with payments as follows:

- a) \$5,000 earnest money;
- b) \$15,000 on October 1, 1999;
- c) monthly payments of \$1,083.33 until June 1, 2000;
- d) \$30,000 additional payment on June 1, 2000;
- e) monthly payments of \$1,300 per month for 60 months

The last payment was made on the Contract for Deed in January of 2004, and the balance due and owing under the contract was \$151,217.86. At the time of the transfer to the Debtor and Gayla Gervais, the debt was approximately \$165,714.34.

The Debtor had previous homesteads and utilized some of the proceeds for the sale of these assets towards building equity in the homestead.

Hoper and Spina allege that the Debtor knew he would be unable to pay for grain purchased from farmers and assert that:

"This state of affairs may have continued for an extended period of time with old debts being paid from the proceeds of recently delivered grain. If the Debtor acquired title to the homestead property with proceeds diverted from the Debtor's business operations, the Debtor's exemption of his homestead should be disallowed and said property impressed with a trust in favor of unsecured creditors."

Hoper and Spina offer no proof of these allegations, and no law which supports a denial of exemption. This allegation would be grounds for denial of a Discharge under 11 USC 727, if proved. There is no basis for denying the claimed exemption.

3. The Debtor has cash value in insurance in the amount of approximately \$58,442.

MSA Sec. 550.37, Subd. 23 provides:

"Subd. 23. **Life insurance aggregate interest.** The debtor's aggregate interest not to exceed in value \$4,000 (now \$7,200) in any accrued dividend or interest under or loan value of any unmaturred life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent."

The Debtor clearly meets the requirements of this section. Attached is a copy of the declaration page for the life insurance policy. The Debtor is the insured and the owner of the policy. The amount claimed exempt is accrued dividends, interest or loan value of an unmaturred life insurance policy. Clearly the Debtor's claimed exemption must be allowed. There is no evidence of any increase of value on the part of the Debtor and these objections must be denied.

4. The Debtor has claimed the interest in the IRA with Jarvis in the approximate amount of \$2,000.00 as exempt. This IRA was created to receive the proceeds from another qualified

retirement plan. The proceeds remain in a "qualified plan" for tax purposes and are subject to 10% early withdrawal penalty from the IRS.

The Debtor claimed the IRA as exempt under Minn. Stat. Sec. 550.37, Subd. 24, which provides a property exemption for:

The Debtors' right to receive present or future payments, or payments received by the Debtors, under a stock bonus, pension, profit sharing, annuity, **individual retirement account**, Roth IRA, individual retirement annuity, simplified employee pension, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent of the Debtors' aggregate interest under all plans and contracts up to a present value of \$30,000.00 (**now \$54,000.00**) and additional amounts under all plans and contracts to the extent reasonably necessary for the support of the Debtor and any spouse or dependents of the Debtors. Emphasis added.

The Debtor's claimed exemption is in an IRA and is for less than the statutory maximum.

To qualify for the exemption under Minn. Stat. §550.37, Subd. 24, the Plan must meet three criteria:

- a) The Debtors have the right to receive payment under an individual retirement account;
- b) The Debtors' right to payment must be on account of illness, disability, death, age, or length of service; and
- c) The Debtors' aggregate interest is less than \$54,000.00.

See *In Re Gagne*, 166 B.R. 362, 363 (Bankr. D. Minn. 1993, aff'd in retirement part *Gagne v. Bergquist*, 179 B.R. 884, D.Minn. 1994).

The Debtors' claimed exemption in the IRA meets the first and the third requirements. Judge Kressel has held that an IRA does not qualify for the exemption under Minn. Stat. §550.37, Subd. 24 because the Debtors have unlimited access to the IRA account and therefore, such accounts are not payable on account of illness, disability, death, age or length or services. See *In Re Jenkins*, 300 B.R. 348 (Bky. Minn. 2003). The Debtors assert that Judge Kressel's

rejection of the arguments of the Debtors with respect to the Minnesota Supreme Court analysis of *Estate of Emlyn Jones v. Kvamm*, 529 N.W.2d 335 (Minn. 1993) is in error. The benefits which the Debtor asserts to be exempt derived from wages earned by the Debtor and were contributed by the Debtor or his employer. All of the funds in the Jarvis IRA clearly meet the *Jones v. Kvamm* test.

United States District Court Judge Ann Montgomery has certified the question to the Minnesota Supreme Court on the question of whether or not a Debtor's IRA that is presently accessible is subject to a withdrawal penalty is exempt under Minn. Stat. §550.37, Subd. 24. See *Clark v. Lindquist*, 2003 W.L. 22697172 (November 12, 2003). This Court should delay rendering a decision on this matter until such time as the Minnesota Supreme Court rules in the *Clark* case.

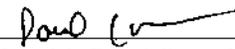
5. The Debtor may offer oral testimony himself, and the substance of the testimony will be in regard to the averments herein. The Debtor, Daniel Miller, may offer oral testimony himself and the substance of the testimony will be in regard to his use of the equipment in his future farming operation as well as the Debtor's intention to remain a farmer. In addition, the Debtor will testify regarding the reasonable necessity of utilizing the equipment in his farming business. He will also testify regarding the off-farm income and its use to subsidize the farm operation when necessary.

6. The Debtor may also utilize as exhibits his schedules as well as his income tax returns. The Debtor may utilize exhibits including the Jarvis IRA documentation, the insurance declaration page, and St. Hilaire Pension Plan.

WHEREFORE, Debtors respectfully request the Court deny the objections of Gary Hoper and John Spina to the Debtor's claimed exemptions.

Dated this 14 day of May, 2003.

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