

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bankruptcy No. 04-60106

Daniel S. Miller,

Debtor.

**RESPONSE TO OBJECTIONS
OF UNSECURED CREDITOR'S COMMITTEE TO CLAIMED EXEMPTIONS**

1. The Unsecured Creditor's Committee has no standing to raise an objection to the Debtor's claimed exemptions. 11 U.S.C. §348 does not provide for the continuance of a Creditor's Committee post-conversion. The law is that:

“the conversion to Chapter 7 and the ensuing termination of the Chapter 11 Order for Relief results in the dissolution of any committee appointed under 11 U.S.C. §1104 and similarly prevents any award of attorney's fees for post-conversion services.”

SEE In re *Kel-Wood Timber Products*, 88 B.R. 93 (Bky.Ed. Virginia, 1988), in according *Great Plains Northern Paper, Inc. vs. Belgrade Paper Company*, 299 B.R. 1 (D.Main, 2003). The Chapter 7 Trustee now has the duties of the Unsecured Creditor's Committee. The Motion by the Unsecured Creditor's Committee must be denied as it no longer exists and it has no standing. Individual Creditors may file objections to exemptions, as they are parties in interest. If an objection is to be made, it must be made by the creditors in their individual capacity.

2. The Debtor withdraws his claim of exemption to farm equipment.

3. The Debtor's claim is exempt on motor vehicles. The Debtor claims his 1998 GMC pickup as exempt in the amount of \$3,500.00. The Debtor clearly qualified for this exemption. Any value over \$3,500.00 is property of the Estate. All other motor vehicles were liquidated in the Chapter 11 proceeding.

4. The Debtor has cash value in insurance in the amount of approximately

\$58,442.00. Minn. Stat. §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. 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.

The Committee's attorney states that he asked the Debtor to liquidate all policies and turn the proceeds over for application to the unsecured debt. The Debtor has not done so. This is not grounds for objection to the exemption, but instead an attempt to show and allege the bad faith of the Debtor. However, the Committee's attorney fails to mention that the U.S. Trustee's office informed the Debtor that he needs to get a Court Order before he could cash in any life insurance policy or borrow the proceeds. *See Transcript of First Meeting of Creditors at page 124-125.* The Trustee's office did say the Debtor could change the beneficiary to name the estate, which the Debtor has done. There is no grounds to deny the Debtor's exemption in the life insurance cash value. Any amounts over the exemption claimed will remain property of the Estate and be liquidated by the Chapter 7 Trustee.

5. 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. §550.37, Subd. 24, which provides a property exemption for:

The Debtor's 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 Debtor's 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 interest in the IRA is governed by Clark v. Lindquist, 683 N.W. 2d 784 (Minn. 2004). The Minnesota Supreme Court found that the Legislature intended IRAs to be exempt by naming them in the Statutes, and that the Debtor's access to the funds is irrelevant. This case overrules *In re Jenkins*, 300 B.R. 398 (Bky.Minn. 2003) and *In re Gagne*, 166 B.R. 362 (Bky.D.Minn 1993). There is no basis to deny the Debtor's interest in the IRA as long as he is below the statutory dollar limitation, which he is.

6. The Debtor also exempts the Pension Plan through St. Hilaire Co-op Elevator at Harvest States in the amount of \$38,000.00. This amount clearly meets the requirements of Minn. Stat. §550.37, Subd. 24 as set forth above. Further, the Debtor's interest is an ERISA-qualified employee profit sharing plan, is not subject to involuntary or transfer that is enforceable under applicable non-bankruptcy law and is excluded from the Bankruptcy Estate. SEE *Patterson v. Shumate*, 504 U.S. 753, 112 S.Ct. 2242, 119 L.Ed. 2d 219 (1992).

7. The Debtor may offer oral testimony himself, and the substance of the testimony will be in regard to the Life Insurance cash value, the Jarvis IRA, the St. Hilaire Pension, and the motor vehicle claimed exempt.

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

WHEREFORE, Debtor respectfully requests the Court deny the objections of the

Unsecured Creditor's Committee to the Debtor's claimed exemptions.

Dated this 13 day of October, 2004.

FLUEGEL, HELSETH, MCLAUGHLIN,
ANDERSON & BRUTLAG, CHARTERED



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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bankruptcy No. 04-60106

Daniel S. Miller,

Debtor.

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

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

1. The Debtor withdraws his claim of farm equipment as exempt.
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. 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. §550.37, Subd. 24, which provides a property exemption for:

The Debtor's 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 Debtor's 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 interest in the IRA is governed by Clark v. Lindquist, 683 N.W. 2d 784 (Minn. 2004). The Minnesota Supreme Court found that the Legislature intended IRAs to be exempt by naming them in the Statutes, and that the Debtor's access to the funds is irrelevant. This case overrules *In re Jenkins*, 300 B.R. 398 (Bky.Minn. 2003) and *In re Gagne*, 166 B.R. 362 (Bky.D.Minn 1993). There is no basis to deny the Debtor's interest in the IRA as long as he is below the statutory dollar limitation, which he is.

5. The Debtor also exempts the Pension Plan through St. Hilaire Co-op Elevator at Harvest States in the amount of \$38,000.00. This amount clearly meets the requirements of Minn. Stat. §550.37, Subd. 24 as set forth above. Further, the Debtor's interest is an ERISA-qualified employee profit sharing plan, is not subject to involuntary or transfer that is enforceable under applicable non-bankruptcy law and is excluded from the Bankruptcy Estate.

SEE *Patterson v. Shumate*, 504 U.S. 753, 112 S.Ct. 2242, 119 L.Ed. 2d 219 (1992).

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7. The Debtor may also utilize as exhibits his schedules as well as his income tax records. 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 17 day of October, 2004.

FLUEGEL, HELSETH, MCLAUGHLIN,
ANDERSON & BRUTLAG, CHARTERED



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