

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: SCHUTZ, MICHAEL W.

Chapter 7
BKY CASE NO. 04-31601

Debtor.

**NOTICE OF HEARING AND MOTION
OBJECTING TO EXEMPT PROPERTY**

TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTOR, HIS ATTORNEY AND
OTHER PARTIES IN INTEREST:

1. Patti J. Sullivan, Trustee of the bankruptcy estate of the above-named Debtor moves the court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 3:30 P.M. on June 21, 2004 in Courtroom No. 228B, at the United States Court House, 316 N Robert St., St. Paul, Minnesota 55101.
3. Any response to this motion must be filed and delivered not later than 3:30 P.M. on June 16, 2004, which is three days before the time set for the hearing, (excluding intermediate Saturdays, Sundays, and legal holidays), or filed and served by mail not later than June 10, 2004, which is seven business days before the time set for the hearing (excluding intermediate Saturdays, Sundays, and legal 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, Bankruptcy Rules 4003, 5005, 9013 and 9014, Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on March 17, 2004. The debtor filed an Amended Schedule C on May 14, 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 9006-1 and 9013-1 to 9013-5. Movant requests relief with respect to Debtor's claim for exemption.

6. The Debtor, in Schedule C, claimed as exempt the following property:

Non-Homestead Property (Lot 11 Block 9 Summer
Hills First Addition, Washington County, Minnesota)
with a value of \$16,168.00.

7. Debtor claimed the above asset exempt under 11 U.S.C. § 522(d)(1). That Section permits an exemption for "The debtor's aggregate interest...in real property or personal property that the debtor or a dependent of the debtor uses as a residence, ...". See Keller v. Johnson (In re Johnson), 288 B.R. 130 (8th Cir. B.A.P. 2003). Keller v. Johnson has been appealed to the Eighth Circuit. The decision in Keller is pending. The Eighth Circuit has not yet determined whether or not a lien against a former marital residence constitutes an aggregate interest in real property. Therefore, until the Eighth Circuit renders a decision regarding a lien against marital property, the Trustee asserts there is an issue as to whether or not the debtor may rightfully exempt his interest in the "marital lien" under 11 U.S.C. §522(d)(1).

8. Additionally, because the debtor's divorce decree states that he has a marital lien in the property in the amount of \$37,500.00, it appears the "marital lien" has been undervalued. The Trustee objects to his claim of exemption to assure the lien remains property of the estate to the extent it exceeds the amount that can be claimed exempt under 11 U.S.C. §522(d)(1) or 11 U.S.C. §522(d)(5). Also, if it is determined that the debtor cannot exempt his "marital lien" under 11 U.S.C. § 522(d)(1), then, he will exceed the amount he can exempt under 11 U.S.C. § 522(d)(5), and the following property is not exempt: (1) the debtor's Wells Fargo checking account with no value; (2) the debtor's Merchant's Bank checking account with a value of \$5.00;

(3) the debtor's Roth IRA with a value of \$2,077.00; (4) the 2001 Dodge Ram in which the debtor exempts \$0.00 of its value; and (5) the 1982 Reliant with a value of \$100.00.

WHEREFORE, the Trustee requests an order

a. Sustaining the Trustee's objection to the Debtor's claimed exemption of the following Property:

1. Non-Homestead Property (Lot 11 Block 9 Summer Hills First Addition, Washington County, Minnesota) with a value of \$16,168.00;
2. Debtor's Wells Fargo checking account with no value;
3. Debtor's Merchant's Bank checking account with a value of \$5.00;
4. Debtor's Roth IRA with a value of \$2,077.00;
5. 2001 Dodge Ram in which the debtor exempts \$0.00 of its value;
6. 1982 Reliant with a value of \$100.00; and

b. Granting such other relief the Court deems just and proper.

Dated this 4th day of June, 2004

/e/ Patti J. Sullivan

Patti J. Sullivan
Trustee in Bankruptcy
Attorney ID No. 170124
P.O. Box 16406
St. Paul, MN 55116
(651) 699-4825

VERIFICATION. I, Patti J. Sullivan, Movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 4th day of June, 2004.

/e/ Patti J. Sullivan

Patti J. Sullivan, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In the Matter of:

SCHUTZ, MICHAEL W.

BKY NO. 04-31601

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I, Joeline Kissinger, declare under penalty of perjury that on the 4th day of June 2004, I mailed a copy of the attached **Notice of Hearing and Motion Objecting to Exempt Property and Proposed Order** by first class mail postage prepaid to each entity named below or on the statement attached at the address stated below or in said attachment for each entity:

United States Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Michael W. Schutz
472 14th Street West
Red Wing, MN 55066-3650

Robert J. Hoglund
P.O. Box 130938
Roseville, MN 55113

Executed on this 4th day of June 2004.



Joeline Kissinger

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: SCHUTZ, MICHAEL W.

Chapter 7
BKY CASE NO. 04-31601

Debtor.

ORDER

At St. Paul, Minnesota, June 21, 2004.

This bankruptcy case came before the Court on objection by the trustee to certain claimed exempt property by the Debtor. Appearances were noted on the record. Based on the objection, argument of counsel and the files, records and proceedings herein

IT IS HEREBY ORDERED: that the Trustee's Objection to Claimed Exempt Property is sustained. Debtor's interest in the following property is not exempt:

1. Non-Homestead Property (Lot 11 Block 9 Summer Hills First Addition, Washington County, Minnesota) with a value of \$16,168.00;
2. Debtor's Wells Fargo checking account with no value;
3. Debtor's Merchant's Bank checking account with a value of \$5.00;
4. Debtor's Roth IRA with a value of \$2,077.00;
5. 2001 Dodge Ram in which the debtor exempts \$0.00 of its value; and
6. 1982 Reliant with a value of \$100.00.

BY THE COURT

Dated: _____

GREGORY F. KISHEL
CHIEF JUDGE OF U.S. BANKRUPTCY COURT