

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

IN RE: LAUREL JEAN JOSEPH

Case no. BKY 04-32131-DDO  
Chapter 13 case

**NOTICE OF HEARING AND VERIFIED MOTION OBJECTING TO  
THE PROOF OF CLAIM FILED BY KRIS G. JACOBSEN**

To: Chris G. Jacobsen and other entities specified in Minnesota Local Rule 3007-1.

1. Laurel Jean Joseph, the Debtor herein, moves the Court for the relief requested below, for the reasons detailed in the attached Memorandum of Law, and gives notice of hearing.
2. The Court will hold a hearing on this Motion on Wednesday, September 22, 2004 at 2:30 p.m., or as soon thereafter as counsel may be heard, in Courtroom No. 228A, at the United States Bankruptcy Court, 227 Federal Building, 316 North Robert Street, St. Paul, Minnesota, 55101, before the Honorable Dennis D. O'Brien.
3. Any response to this Motion must be filed and delivered not later than Friday, September 17, 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 Monday, September 13, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §157 and §1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This is a core proceeding. The Petition commencing this Chapter 13 case was filed April 7, 2004 and is now pending in this Court.
5. This Motion arises under 11 U.S.C. §502(a) and Fed. Rule Bankr. P. 3007 and Local Rule 3007-1. Movant requests that the Court disallow the unsecured priority Proof of Claim filed by Kris G. Jacobsen in the amount of \$3,992.20.
6. Jacobsen made an unsecured personal loan to the Debtor.
7. The Debtor listed Jacobsen as a general unsecured creditor in her Schedules to be provided for accordingly in her Chapter 13 Plan.
8. Jacobsen filed a claim for \$3,992.20, erroneously designated as an unsecured priority claim.

9. Jacobsen specified that the claim is for: 1) 11 U.S.C. §507(a)(6) Deposit toward the purchase, lease, or rental of property or services for personal, family of household use; AND 2) 11 U.S.C. §507(a)(8) Taxes or penalties owed to governmental units.

10. The Jacobsen claim must be disallowed as there is no basis in law for the priority designation. As detailed in the Memorandum of Law attached hereto, Jacobsen is neither a consumer creditor, nor a governmental unit afforded priority status by 11 U.S.C. §507(6) and (8).

WHEREFORE, the Debtor, moves this Honorable Court to:

1. Allow the Motion Objecting to the priority Proof of Claim filed by Kris G. Jacobsen;  
Disallow the Jacobsen priority claim in full;  
Allow Jacobsen a general unsecured claim in the amount of \$3,992.20;  
and  
Grant such further relief as the Court deems just and equitable.

DATED: ~~August~~ 6, 2004

By:

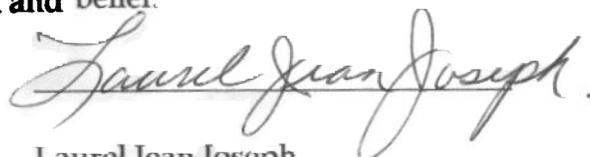
THE LAW OFFICES OF CURTIS WALKER  
/e/ Curtis K. Walker  
Curtis K. Walker, #113906  
Thayer A.K. Butler, #200815  
Attorney for Debtors  
4356 Nicollet Avenue South  
Minneapolis, MN 55409  
(612) 824-4357

#### VERIFICATION

I, Laurel Jean Joseph, the Debtor and undersigned moving party named in the foregoing Notice of Hearing and Motion Objecting to The Proof of Claim Filed by Kris G. Jacobsen, declare under penalty of perjury that the foregoing is true and correct according to the best of our knowledge, information and belief.

Executed on

8-6-04



Laurel Jean Joseph  
255 Westview Drive  
Townhouse 114  
West St. Paul, MN 55118

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

IN RE: LAUREL JEAN JOSEPH

Case no. BKY 04-32131-DDO  
Chapter 13 case

**MEMORANDUM OF LAW REGARDING DEBTOR'S  
OBJECTION TO THE PROOF OF CLAIM FILED BY KRIS G. JACOBSEN**

**FACTS**

The Debtor is providing for her creditors through a Chapter 13 bankruptcy proceeding filed on April 7, 2004, in the District of Minnesota.

Prior to filing her bankruptcy case, the Debtor took an unsecured personal loan from Kris G. Jacobsen. The balance on the loan is \$3,992.20. The Debtor provided for Jacobsen through her Plan as a general unsecured creditor.

Jacobsen filed a Proof of Claim in the within case in the amount of \$3,992.20, erroneously characterized as a priority claim. Jacobsen specified that the claim was for 1) a deposit toward purchase, lease, or rental of property or services for personal, family of household use - 11 U.S.C. §507(a)(6); and 2) taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8). See Exhibit #1. The Debtor objects to the priority claim in full, for the following reasons:

**ARGUMENT**

**§507(a)(6)**

1. Jacobsen's claim is not entitled to priority status as contemplated by 11 U.S.C. §507(a)(6) which reads: "...arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease or rental of property, or the purchase of services for the personal, family, or household use of such individual(s), that were not delivered or provided."

2. Congressional intent in creating 507(a)(6) is to protect consumer creditors who have deposited money with the debtor, without receiving the services or property contracted for. Mr. Jacobsen is not the "consumer" contemplated by Congress. He did not deposit money for rental of property or the purchase of services. He made a personal loan to the Debtor, which does not qualify for priority status.

S507(a)(8)

3. Jacobsen's claim is not entitled to the priority status 11 U.S.C. §507(a)(8) affords governmental units for specified tax claims, as Mr. Jacobsen is an individual, not a governmental unit.

CONCLUSION

There is no basis in law for Kris G. Jacobsen's priority claim under either §507(a)(6) or §506(a)(8) as alleged on the Proof of Claim filed. The Debtor objects to Jacobsen's priority claim in full and proposes that the Court allow Mr. Jacobsen a general unsecured claim in the amount of \$3,992.20.

/e/ Curtis K. Walker  
Curtis K. Walker, #113906  
Thayer A.K. Butler, #200815  
Mary C. Hoben, #335411  
Attorney for Debtors  
4356 Nicollet Avenue South  
Minneapolis, MN 55409  
(612) 824-4357

DATED: August 12, 2004

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA (ST. PAUL)

Name of Debtor  
LAUREL JEAN JOSEPH

Case Number  
04-32131 - DDO

RECEIVED  
04 MAY -5 PM 12:29  
U.S. BANKRUPTCY COURT  
ST. PAUL, MN

Name of Creditor (The person or other entity to whom the debtor owes money or property):  
KRIS G JACOBSEN  
Name and Address where notices should be sent:  
KRIS G JACOBSEN  
1236 CHARLTON ST  
W ST PAUL MN 55118

- Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if the address differs from the address on the envelope sent to you by the court.

Telephone Number:

Account or other number by which creditor identifies debtor:  
470-52-0109 / CASE NO.

Check here if  replaces this claim  amends a previously filed claim, dated \_\_\_\_\_

1. Basis for Claim
- Goods sold
  - Services performed
  - Money loaned
  - Personal injury/wrongful death
  - Taxes
  - Other DEFAULT MTG ON GMAC MTG CORP
- 98-34504 GFK  
(mortgage)

- Retiree benefits as defined in 11 U.S.C. §1114(a)
- Wages, salaries, and compensation (fill out below)  
Your SS #: \_\_\_\_\_  
Unpaid compensation for services performed from \_\_\_\_\_ to \_\_\_\_\_  
(date) (date)

2. Date debt was incurred:  
July 29, 2003

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed:

\$ 3,992.20

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.

- Check this box if your claim is secured by collateral (including a right of setoff).  
Brief Description of Collateral:  
 Real Estate  Motor Vehicle  
 Other \_\_\_\_\_

Value of Collateral: \$ \_\_\_\_\_

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ \_\_\_\_\_

6. Unsecured Priority Claim.

- Check this box if you have an unsecured priority claim  
Amount entitled to priority \$ 3,992.20  
Specify the priority of the claim:  
 Wages, salaries, or commissions (up to \$4,925)\* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- Up to \$ 2,225\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(\_\_\_\_).

\*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

SEND ORIGINAL COPY TO:  
U.S. BANKRUPTCY COURT  
200 U.S. COURTHOUSE  
316 NORTH ROBERT STREET  
ST. PAUL, MN 55101

Ajt

Date

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

FOR PAYMENT  
SEND COMPLETE COPY TO:  
CHAPTER 13 TRUSTEE  
(SEE NOTICE OF COMMENCEMENT  
CASE FOR NAME AND ADDRESS  
OF CHAPTER 13 TRUSTEE)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

IN RE: LAUREL JEAN JOSEPH  
DDO

Case no. BKY 04-32131-

Chapter 13 case

**ORDER**

This matter is before the Court on Laurel Jean Joseph's Motion Objecting to the Proof of Claim Filed by Kris G. Jacobsen. The Motion came on for hearing on Wednesday, September 22, 2004 at 2:30 p.m., in St. Paul, Minnesota. Appearances are as noted in the record.

IT IS HEREBY ORDERED:

That the Debtor's Objection to the priority Proof of Claim filed by Kris G. Jacobsen is sustained, Kris G. Jacobsen's priority Proof of Claim is disallowed in full, and Kris G. Jacobsen is allowed a general unsecured claim in the amount of \$3,992.20.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Dennis D. O'Brien  
Judge of Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Joseph, Laurel J.

Case No. BKY: 04-32131

Debtor(s)

Chapter 13 Case

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I, Rebecca H. Johnson, declare under penalty of perjury that on August 12, 2004, I served the annexed NOTICE OF HEARING AND VERIFIED MOTION Objecting to The Proof of Claim to each person referenced below by enclosing the same in an envelope with first class mail postage prepaid and addressed to each as follows:

Jasmine Z. Keller  
Trustee In Bankruptcy  
310 Plymouth Building  
Minneapolis, MN 55402

Kris G. Jacobsen  
1236 Charlton Street  
West St. Paul, MN 55118

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

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: August 12, 2004

/e/ Rebecca H. Johnson  
Rebecca H. Johnson