

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No.: BKY 04-32864

JAMES HAROLD JUTZ
DARLEEN MARY JUTZ,

Debtors.

Chapter 7 Case

**NOTICE OF HEARING
AND
MOTION OBJECTING TO CLAIMED EXEMPTIONS**

TO: The debtors and other entities specified in Local Rule 9013-3.

Paul W. Bucher, the trustee in bankruptcy in this case (the “trustee”), moves the Court for the relief requested below and gives notice of hearing.

1. The Court will hold a hearing on this Motion at 2:15 p.m. on September 2, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

2. Because this Motion is being delivered at least 21 days or mailed at least 24 days before the hearing date, any response to this Motion must be filed and delivered not later than August 26, 2004, which is seven days before the time set for the hearing (including Saturdays, Sundays and holidays), or filed and served by mail not later than August 23, 2004, which is ten days before the time set for the hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This Court has jurisdiction over this Motion pursuant to Sections 157 and 1334 of Title 28 of the United States Code, Rule 5005 of the Federal Rules of Bankruptcy Procedure, and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on May 11, 2004. This case is now pending in this court.

4. This Motion arises under Section 522 of the United States Bankruptcy Code (11 U.S.C. §522), Rule 4003 of the Federal Rules of Bankruptcy Procedure, and Local Rule 4003-1(a). This Motion is filed under Rules 9013 and 9014 of the Federal Rules of Bankruptcy Procedure and Local Rules 9013-1, 9013-2, 9013-3 and 9013-5. The trustee requests relief with respect to objections to certain property claimed as exempt by the debtors.

5. The debtors have elected to claim property as exempt under Section 522(b)(2) of the United States Bankruptcy Code. See the attached Schedule C filed in this case.

6. The debtors have claimed the following assets as exempt under the following statute: Joint Checking Account with Alliance Bank and Darleen's Checking Account with Alliance Bank under Minn. Stat. §550.37, subd. 13. This statute allows debtors to exempt earnings up to 75% and exempt funds on deposit if they are earnings deposited within the last 20 days. The balance in the Joint Checking Account with Alliance Bank was actually \$51.22 on the date of filing and the last deposit was made on 4/13/04. The balance in Darleen's Checking Account with Alliance Bank was actually \$23.72 on the date of filing and the last deposit was made on 4/20/04. Since deposits into both accounts were made more than 20 days before filing, the trustee is entitled to the entire balance on the date of filing and the debtors' exemption should be denied.

7. The debtors have claimed the following assets as exempt under the following statute: wedding bands and handful of cheap jewelry under Minn. Stat. §550.37, subd. 4(a). The trustee objects on the grounds that the debtors are only allowed to exempt one watch under Minnesota exemptions and that this statute is unconstitutional because it sets no objective limits for the exemptions. See, In re Hilary, 76 B.R. 683 (Bankr. D. Minn. 1987).

8. The debtors have claimed the following assets as exempt under the following statute: Option to Repurchase real property legally described as follows: "The North 960 feet of the NW ¼ of the SE ¼, Section 9, Township 112, Range 31 West, Sibley County, Minnesota" under Minn. Stat. §510.01, 510.02. This statute allows debtors to exempt their homestead defined as the house owned and occupied by the debtor and the land on which it sits up to 160 acres in size in a rural area. The trustee objects to the claimed exemption on the grounds that the option to purchase is not an interest in land, but merely a privilege given by owner of the property to the debtor to purchase the property at the debtor's election. See, M.L. Gordon Sash & Door Co., v. Mormann, 271 N.W. 2d 436 (Minn. 1978).

9. The debtors have claimed the following assets as exempt under the following statute: Slander of Title vs. Homestead under Minn. Stat. §510.01, 510.02. This statute allows debtors to exempt their homestead defined as the house owned and occupied by the debtor and the land on which it sits up to 160 acres in size in a rural area. The trustee objects to the claimed exemption on the grounds that this claim is not an interest in land or buildings. It is simply a claim, which is not covered by the homestead exemption statute.

10. The debtors have claimed the following assets as exempt under the following statute: Potential claim vs. First Federal Bank for intentional infliction of emotional distress under Minn. Stat. §550.37, subd. 22. The trustee objects on the grounds that the trustee has insufficient information to determine if this claim may be exempted under this statute.

11. The debtors have claimed the following assets as exempt under the following statute: fax machine, Baler Square 3x3x8 4755, shop tools, and John Deere Drill 8350 under Minn. Stat. §550.37, subd. 5. This statute allows an individual debtor to exempt up to \$13,000 (or \$26,000 jointly) in farm machines and implements used in farming operations, livestock, farm produce, and standing crops. The debtors have exempted \$26,010 under this statute. The trustee objects to the claimed exemption on the grounds that the debtors have exceeded the amount allowed under this statute.

12. If oral testimony is necessary at the hearing, the trustee will call the debtors: James Harold Jutz and Darleen Mary Jutz, 64644 300 Street, Gibbon, MN 55335, who will testify concerning the Joint Checking Account with Alliance Bank and Darleen's Checking Account with Alliance Bank, wedding bands and handful of cheap jewelry, Option to Repurchase real property legally described as follows: "The North 960 feet of the NW ¼ of the SE ¼, Section 9, Township 112, Range 31 West, Sibley County, Minnesota," Slander of Title vs. Homestead, Potential claim vs. First Federal Bank for intentional infliction of emotional distress, fax machine, Baler Square 3x3x8 4755, shop tools, and John Deere Drill 8350, and any other matters, if necessary.

Wherefore, the trustee moves the Court for an order denying the above exemptions claimed by the debtors, and such other relief as the Court finds just and equitable.

Dunlap & Seeger, P.A.

Dated: July 28, 2004

/e/ Paul W. Bucher

By: Paul W. Bucher
Registration No. 123237

Attorneys for Trustee
206 South Broadway, Suite 505
Post Office Box 549
Rochester, Minnesota 55903-0549
Telephone: (507) 288-9111

VERIFICATION

I, Paul W. Bucher, the trustee in bankruptcy in this case and the moving party named in the foregoing Notice of Hearing and Motion Objecting to Claim of Exemption, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on July 28, 2004

/e/ Paul W. Bucher

Paul W. Bucher
206 South Broadway, Suite 505
Rochester, Minnesota 55904

In re **James Harold Jutz,
Darleen Mary Jutz**

Case No. 04-32864

Debtors

SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

[Check one box]

- 11 U.S.C. §522(b)(1): Exemptions provided in 11 U.S.C. §522(d). Note: These exemptions are available only in certain states.
 11 U.S.C. §522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
Real Property			
See Attachment A-1	Minn. Stat. §§ 510.01, 510.02	100%	498,000.00
See Attachment A-2	Minn. Stat. §§ 510.01, 510.02	100%	1.00
Checking, Savings, or Other Financial Accounts, Certificates of Deposit			
Joint Checking Account; Alliance Bank, 322 North Minn Street, New Ulm, MN 56073	Minn. Stat. § 550.37(13)	75%	26.71
Darleen's Checking Account; Alliance Bank, 322 North Minn Street, New Ulm, MN 56073	Minn. Stat. § 550.37(13)	75%	23.67
Household Goods and Furnishings			
Household Goods and Furnishings	Minn. Stat. § 550.37(4)(b)	100%	2,150.00
Wearing Apparel			
Wearing Apparel	Minn. Stat. § 550.37(4)(a)	100%	100.00
Furs and Jewelry			
Wedding Bands (\$65) ; Handful of Cheap Jewelry (\$25)	Minn. Stat. § 550.37(4)(a)	100%	90.00
Interests in Insurance Policies			
Darleen Jutz; Consec Life Insurance Policy #010447845	Minn. Stat. § 550.37(23)	100%	807.86
James Jutz; Consec Life Insurance Policy # 010426827	Minn. Stat. § 550.37(23)	100%	718.17
Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans			
Darleen Jutz - Public Employees Retirement Association ("PERA"), excluded by 11 USC 541(c)(2) and Minn Stat Ch 353; fund balance appx \$1,453.54	Minn. Stat. § 550.37(24) Minn. Stat. §353.15	100% 100%	0.00
Accounts Receivable			
Approximately 1543.24 bu at \$9.90/bu beans delivered to elevator, but debtor not yet paid	MINN Stat § 550.37 subd 13	75%	15,278.08
Approximately \$2,500 owed from Lunderborgs for 2004 fall rent	Minn. Stat. §§ 510.01, 510.02	2,500.00	2,500.00
Darleen's earned but unpaid gross wages	MINN Stat § 550.37 subd 13	75%	317.12
Other Contingent and Unliquidated Claims of Every Nature			
Slander of Title vs Homestead	Minn. Stat. §§ 510.01, 510.02	100%	Unknown

In re **James Harold Jutz,
Darleen Mary Jutz**

Case No. 04-32864

Debtors

SCHEDULE C. PROPERTY CLAIMED AS EXEMPT
(Continuation Sheet)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
Potential claim vs First Federal Bank for intentional infliction of emotional distress	Minn. Stat. § 550.37(22)	100%	Unknown
<u>Automobiles, Trucks, Trailers, and Other Vehicles</u>			
1999 Ford Lincoln Continental	Minn. Stat. § 550.37(12a)	3,600.00	4,000.00
1983 Ford F250	Minn. Stat. § 550.37(12a)	100%	250.00
<u>Office Equipment, Furnishings and Supplies</u>			
Fax Machine	Minn. Stat. § 550.37(5)	100%	10.00
<u>Farming Equipment and Implements</u>			
See Attachment B-1 for List of Exempt Equipment	Minn. Stat. § 550.37(5)	26,000.00	26,450.00

SCHEDULE A. REAL PROPERTY
Attachment A-1

A warranty deed interest in the following described property:

The East Half of the Southwest Quarter (E1/2 of SW1/4), the West Half of the Southeast Quarter (W1/2 of SE1/4), Section Nine (9), Township One Hundred Twelve (112), Range Thirty-one (31), Sibley County, Minnesota

EXCEPT

The North 960 feet of the Northwest Quarter of the Southeast Quarter, Section 9, Township 112, Range 31 West.

AND SUBJECT TO a 33 foot wide easement for access and egress along the East line of the West Half of the Southeast Quarter of the said Section 9, in favor of the property described in the above exception and also in favor of the Southwest Quarter of the Northeast Quarter of the said Section 9.

Also Subject to a disputed lis pendens claim by First Federal Bank against the following described property:

That part of the East Half of the Southwest Quarter (E1/2 of SW1/4) of Section Nine (9), described as follows:

Commencing at the South Quarter corner of said Section 9; thence North along the quarter-section line a distance of 56 rods to the point of beginning; thence continuing North along the same quarter section line a distance of 37 rods; thence West at right angles, a distance of 39 rods; thence South, at right angles, a distance of 37 rods; thence East, at right angles, a distance of 39 rods to the point of beginning;

together with all hereditaments and appurtenances belonging thereto.

In re **James Harold Jutz**
Darleen Mary Jutz

Case No.

Debtor(s)

SCHEDULE A. REAL PROPERTY
Attachment A-2

The debtors have an option to repurchase the following property:

The North 960 feet of the Northwest Quarter of the Southeast Quarter, Section 9, Township 112, Range 31 West, Sibley County, Minnesota.

SUBJECT TO a 33 foot wide easement for access and egress along the East line of the West Half of the Southeast Quarter of the said Section 9, in favor of the Southwest Quarter of the Northeast Quarter of the said Section 9.

SCHEDULE B. PERSONAL PROPERTY
Attachment B-1

List of Exempt Equipment:

Baler Square 3x3x8 4755 23000 Fair	\$24,000.00
Shop Tools	\$950.00
John Deere Drill 8350	\$1,500.00
\$10 - fax machine - separately listed	
TOTAL	\$26,450.00 (Debtor will pay trustee or bank \$450.00)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

James Harold Jutz
Darleen Mary Jutz

Bky Case No. 04-32864
Chapter 7

Debtors.

UNSWORN CERTIFICATE OF SERVICE

I, Jennifer M. Albright, declare under penalty of perjury that on July 28, 2004, I mailed copies of the following:

Notice of Hearing and Motion Objecting to Claimed Exemptions and Proposed Order

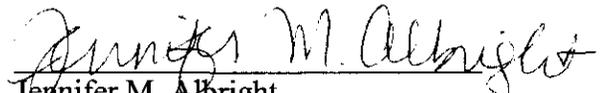
by United States Mail, postage pre-paid, to each entity named below at the address stated below:

James and Darleen Jutz
64644 300 Street
Gibbon, MN 55335

Kurt M. Anderson
P.O. Box 2434
Minneapolis, MN 55402-0434

UNITED STATES TRUSTEE
1015 U S COURTHOUSE
300 SOUTH 4TH STREET
MINNEAPOLIS MN 55415

Executed on July 28, 2004.

Signed: 

Jennifer M. Albright
DUNLAP & SEEGER, P.A.
P O BOX 549
ROCHESTER MN 55903-0549
(507) 288-9111

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No.: BKY 04-32864

JAMES HAROLD JUTZ
DARLEEN MARY JUTZ,

Debtors. Chapter 7 Case

ORDER DENYING CLAIMED EXEMPTIONS

This matter came before the Court on the 2 day of September, 2004, on the Motion of the Trustee Objecting to Claimed Exemptions. Appearances, if any, were noted of record. Based on the file, proceedings and record in this matter:

IT IS HEREBY ORDERED that:

The Trustee's Motion Objecting to Claimed Exemptions is sustained, and accordingly:

1. The debtors' claimed exemption of a Joint Checking Account with Alliance Bank and Darleen's Checking Account with Alliance Bank is denied.
2. The debtors' claimed exemption of wedding bands and handful of cheap jewelry is denied.
3. The debtors' claimed exemption of an Option to Repurchase real property legally described as follows: "The North 960 feet of the NW ¼ of the SE ¼, Section 9, Township 112, Range 31 West, Sibley County, Minnesota" is denied.
4. The debtors' claimed exemption of Slander of Title vs. Homestead is denied.
5. The debtors' claimed exemption of Potential claim vs. First Federal Bank for intentional infliction of emotional distress is denied.
6. The debtors' claimed exemption of fax machine, Baler Square 3x3x8 4755, shop tools, and John Deere Drill 8350 is denied.

Dated: _____

Honorable Dennis D. O'Brien
United States Bankruptcy Judge