

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**Bky. Case No. 04-32864-DDO
Chapter 7**

**James H. Jutz and Darleen M. Jutz,

Debtors.**

**NOTICE OF HEARING AND
OBJECTION TO CLAIMED EXEMPT PROPERTY**

TO: Debtors; Debtors' attorney; the United States Trustee and other parties in interest.

1. First Federal Bank, fsb ("First Federal"), by its undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this objection at 2:15 p.m. on Thursday, September 2, 2004, before the Honorable Dennis D. O'Brien in Courtroom No. 228A, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101 or as soon thereafter as counsel can be heard.

3. Any objection to the relief requested herein must be filed and delivered not later than Monday, August 30, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than Tuesday, August 24, 2004, which is seven (7) days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN RESPONSE 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. §§ 1334 and

157(a), Fed.R.Bankr.P. 5005, Local Rule 1070-1, and applicable rules. This is a core proceeding. The petition commencing this Chapter 7 case was filed May 11, 2004, and the case is now pending in this Court

5. This motion is filed pursuant to Bankruptcy Rule 4003(b) and Local Rule 4003-1 and 9013 et seq. and First Federal objects to the Debtor's claim that the following property is exempt under the applicable exemption statute:

- | | | |
|----|---|---|
| a. | Real Property – See Attached Exhibit “A”
Minn. Stat. §§ 510.01, 510.02 | 100% Claimed Exempt
in value of \$498,000.00 |
| | Real Property – See Attached Exhibit “B”
Minn. Stat. §§ 510.01, 510.02 | 100% Claimed Exempt
in value of \$1.00 |
| b. | Accounts Receivable:
Approximately 1543.24 bu. At \$9.90/bu
Beans delivered to elevator but debtor
not paid
Minn. Stat. § 550.37 subd. 13 | 75% Claimed Exempt
in value of \$15,278.08 |
| | Approximately \$2500 owed from
Lunderborgs for 2004 fall rent
Minn. Stat. § 510.01, 510.02 | \$2500.00 Claimed Exempt |

6. First Federal objects to the exemptions listed above for the following reasons:

- a. A portion of the real property listed in Exhibit A is subject to a disputed lis pendens claim in which First Federal has requested the court to impose a constructive trust. First Federal will file a motion for relief from stay to continue pursuing this claim. If successful, the constructive trust will take precedence over debtors’ interests. Therefore, the exemption should be denied.
- b. Debtors’ do not own and occupy the real property listed in Exhibit B. It is therefore not property of the estate and cannot be exempted.
- c. First Federal has a valid and perfected security interest on the beans claimed as exempt, and therefore has a valid and perfected security interest in the proceeds. First Federal objects to the claimed exemption to the extent it asserts an ownership interest in these proceeds.
- d. Debtors’ homestead is not exempt. Furthermore, first Federal has a valid and perfected security interest in the rent claimed as exempt. First Federal objects to the claimed exemption to the extent it asserts an ownership

interest in these proceeds

WHEREFORE, Trustee respectfully moves the Court for an order sustaining the Trustee's motion to Debtor's claimed exemption listed herein and for such other relief as may be just and equitable.

Dated: July 29, 2004

MACKALL, CROUNSE & MOORE

By /e/Andrew P. Moratzka
Andrew P. Moratzka (Atty No. 0322131)
Attorneys for First Federal FSB
1400 AT&T Tower
Minneapolis, Minnesota 55402
(612) 305-1400

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

Debtor(s)

Case No.

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.



VERIFICATION

I, Dale Orthoff, of First Federal FSB, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on: 7/29/04

Signed: Dale O. Orthoff

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky. Case No. 04-32864-DDO

Chapter 7

James H. Jutz and Darleen M. Jutz,

Debtors.

**MEMORANDUM IN SUPPORT
OF TRUSTEE'S MOTION**

FACTS

On April 2, 2004, First Federal Bank, fsb (“First Federal”) filed a summons and complaint in Sibley County District Court, Court File No. C2-04-73 (the “Action”), against Jutz Farms, Inc., James Jutz, Darlene Jutz, Jesse Jutz, and Johanna Jutz (collectively, “Defendants”), claiming that Defendants were in default on their notes and guarantees, had converted First Federal’s Collateral, and had fraudulently transferred assets. First Federal therefore requested judicial foreclosure and that a constructive trust be placed on Defendants’ assets with priority over any claimed exemptions. First Federal also filed a notice of lis pendens in the Action. First Federal has not proceeded any further with respect to the Action since the filing of Debtors’ bankruptcy petition. However, First Federal will seek relief from the automatic stay to continue this action in the very near future.

According to the Schedules, Debtors claim that the following property is exempt (the “Exemption”) under the applicable exemption statute:

This motion is filed pursuant to Bankruptcy Rule 4003(b) and Local Rule 4003-1 and 9013 et seq. and First Federal FSB (“First Federal”) objects to the Debtors’ claim that the following property is exempt under the applicable exemption statute:

- a. Real Property – See Attached Exhibit “A” 100% Claimed Exempt
Minn. Stat. §§ 510.01, 510.02 in value of \$498,000.00

- Real Property – See Attached Exhibit “B” 100% Claimed Exempt
Minn. Stat. §§ 510.01, 510.02 in value of \$1.00

- b. Accounts Receivable:
Approximately 1543.24 bu. At \$9.90/bu
Beans delivered to elevator but debtor
not paid 75% Claimed Exempt
Minn. Stat. § 550.37 subd. 13 in value of \$15,278.08

- Approximately \$2500 owed from
Lunderborgs for 2004 fall rent \$2500.00 Claimed Exempt
Minn. Stat. § 510.01, 510.02

ARGUMENT

As noted above, a portion of the Real Property listed in Exhibit A is involved in the Action is subject to a disputed lis pendens, and First Federal has asserted that Debtors have converted and/or fraudulently transferred its assets. If successful, the constructive trust will be placed on Debtors’ assets at the time of transfer. *Clarinda Color, LLC v. BW Acquisition Corp., Beowulf Ltd., and Brian Nelson v. Wulf Management Corp., Mark Nelson, and Great Graphx.com*, Court File No. 00-CV-722, pg. 11 (D.Minn 2004). The constructive trust would then take precedence over debtors’ interests. Therefore, the exemption should be denied.

Debtors do not own or occupy the property listed in Exhibit B. According to Minnesota Statute, Debtors can only claim a homestead as exempt land, which is actually owned and occupied. *See* MINN. STAT. §§ 510.01, 510.02. Furthermore, if Debtors do not own the property, it is not property of the estate and cannot be exempted. Therefore, Debtors’ option to repurchase is not exempt.

Debtors also claim crop proceeds as exempt. Jutz Farms, Inc, a Minnesota Corporation (“Jutz Farms”), with the same address as Debtors, granted First Federal a security interest in,

among other things, accounts, inventory, chattel paper and other rights to payment, and crops. Debtors do not own the crops unless they have transferred the assets of Jutz Farms to themselves, which would be subject to avoidance. Furthermore, Debtors could not deny First Federal's valid security interest in the crops. As such, Debtors have no basis for claiming an exemption in the proceeds from the crops. *See Georgens v. Federal Deposit Insurance Corporation*, 406 N.W.2d 95, 99 (Minn.Ct.App. 1987) (holding that wife was not entitled to exemption under MINN. STAT. § 550.37 subd. 5 because bank had valid security interest). Therefore First Federal objects to the claimed exemption.

Finally, Debtors claim rent as exempt. According to the mortgage executed by Debtors on January 29, 2003, First Federal has an interest in the property therein described, as well as the rents received and the fixtures located thereon. While proceeds of a homestead may be exempt, *see Wilson v. First Nat. Bank of Mankato*, 60 N.W.2d 59 (Minn. 1953), that cannot be the case where the homestead itself is not exempt. Here, the homestead is subject to a disputed *lis pendens* action, and is not exempt. Furthermore, First Federal has a valid and perfected security interest in any rent derived from the homestead property. First Federal therefore objects to the claimed exemption.

CONCLUSION

For all the reasons set forth herein, First Federal is entitled to an order denying Debtors' above claimed exemptions.

Dated: July 29, 2004

Respectfully submitted,

MACKALL, CROUNSE & MOORE

By /e/Andrew P. Moratzka
Andrew P. Moratzka (Atty No. 0322131)
Attorneys for First Federal FSB
1400 AT&T Tower
Minneapolis, Minnesota 55402
(612) 305-1400

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky. Case No. 04-32864-DDO
Chapter 7

James H. Jutz and Darleen M. Jutz,

Debtor.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Amy J. Ditty, employed by Mackall, Crouse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing and Objection to Claimed Exempt Property, Memorandum in Support of Objection, and proposed Amended Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

Office of the United States Trustee 1015 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415	(Trustee) Paul W. Bucher P O Box 549 Rochester, MN 55903-0549
(Debtor) James H. Jutz and Darleen M. Jutz 64644 – 300 th Street Gibbon, MN 55335	(Attorney for Debtor) Kurt M. Anderson P O Box 2434 Minneapolis, MN 55402-0434

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

Dated: August 10, 2004

By /e/ Amy J. Ditty

AJD/ajd#712413v1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

**Bky. Case No. 04-32864-DDO
Chapter 7**

**James H. Jutz and Darleen M. Jutz,
Debtor.**

AMENDED ORDER

The above-entitled matter came before the Court for hearing on September 2, 2004, on the motion of First Federal FSB, ("First Federal), objecting to the exemption claim of the Debtor. Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds grounds for sustaining First Federal's objection.

NOW, THEREFORE, IT IS HEREBY ORDERED that Real Property under Minn. Stat. §§ 510.01, 510.02, described as follows:

The East Half of the Southwest Quarter (E ½ of SW ¼), the West Half of the Southeast Quarter (W ½ of SE ¼), 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.

and

That part of the East Half of the Southwest Quarter (E ½ of SW ¼) 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 there to.

and

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.

and the Accounts Receivable, under Minn. Stat. § 550.37 subd. 13 and rent from Rental Property, under Minn. Stat. § 510.01, 510.02 are not exempt.

Dated: _____

Honorable Dennis D. O'Brien
United States Bankruptcy Judge