

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky. No.: 04-32864
Chapter 7 Case

James Harold Jutz,
Darleen Mary Jutz,
Debtors.

**NOTICE OF HEARING AND MOTION FOR LIEN AVOIDANCE ON
TOOLS OF THE TRADE**

TO: The debtor(s) and other entities specified in Local Rule 9013-3(a).

1. The undersigned counsel for James H. Jutz and Darleen M. Jutz moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2:15 p.m. on September 2, 2004 before the Hon. Dennis D. O'Brien in Bankruptcy Courtroom No. 228A, United States Bankruptcy Court, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than August 3, 2004 which is three days (excluding weekends and holidays) before the time set for the hearing, or filed and served by mail not later than August 26, 2004 which is seven days before the time set for the hearing. **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 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on May 11, 2004.

5. This motion arises under 11 U.S.C. Sections 522(f)(1)(B)(ii), and Bankruptcy Rule 4003(d). This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 et seq..

Movants request the following relief:

Lien avoidance with respect to the First Federal Bank of Hutchinson security interest in farm machinery and equipment.

6. First Federal Bank asserts a security interest against all of the machinery and equipment owned by their family farm corporation, Jutz Farms, Inc., and may or may not assert a lien against their personally-owned assets. These liens impair the debtors' exemptions as claimed in their Schedule C. To the best of the debtors' knowledge, records, and recollection, none of these exempted items are purchase money or possessory collateral.

7. The debtors are entitled to lien avoidance in the lesser amount of \$26,000.00 or the full value of all nonpurchase money collateral as to items claimed exempt under Minn. Stat. § 550.37 subd. 5, specifically listed below.

Item	Scheduled value
Baler Square 3x3x8 4755 23000	\$24,000.00
Shop Tools	\$950.00
John Deere Drill 8350	\$1,500.00
fax machine	\$10.00
Total:	\$26,460.00
	(Debtors will pay trustee or bank \$460.00)

8. Both Debtors participate substantially and materially in their farming operation, and are farmers.

9. The Debtors give notice that for witnesses, they may call themselves.

Wherefore, the debtors move the Court for an order as follows:

1. That the security interest and corresponding liens of First Federal Bank in the personal property of the debtors listed in the proposed order filed with this motion, is void and of no force and effect;

2. For such other and further relief as the Court determines just and equitable.

Dated: August 14, 2004.

/s/ Kurt M. Anderson
Kurt M. Anderson # 2148
Attorney for Debtors
P.O. Box 2434
Minneapolis, Minnesota 55402-043
(612) 333-3185

VERIFICATION

We hereby declare under penalty of perjury that we have read the foregoing lien avoidance motion and that the facts stated therein are true and correct.

Executed on: 8-16-04
8-16-04

Daileen May Jutz
James Harold Jutz

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re

Bky. No. 03-37799
Chapter 7 case

James Douglas Jutz and Darleen Marie Jutz

Debtors.

MEMORANDUM OF LAW IN SUPPORT OF LIEN AVOIDANCE

This matter is before the Court on the motion of the debtors for lien avoidance under 11 U.S.C. Section 522(f)(1)(B)(ii). This provision allows lien avoidance on the tools of the trade of the debtors if the lien is non-purchase-money and the property is exempt.

The Debtors have exempted their farm machinery on their Schedule C. First Federal Bank asserts a security interest against this property. These liens impair the Debtors' exemptions.

The Debtors are entitled to lien avoidance on the lesser amount of claimed exemptions or the full value of all non-purchase money collateral. *In re LaFond*, 791 F.2d 623, 626 (8th Cir. 1986). To the best of the Debtors' knowledge none of these items are purchase money collateral.

11 U.S.C. Section 522(f)(2)(B) provides for lien avoidance of non-purchase money security interests in implements or tools of the trade of the debtor. Under Minn. Stat. Section 550.37, Subd. 5, farm machinery, implements and livestock are exempt. In a case such as the present case in which some or all of the farm machinery and equipment are in a closely held farm corporation, subdivision 5 permits the debtors to select their exemptions from corporately owned items.

Based upon the foregoing, the Debtors request the Court to find that the security interests and corresponding liens of First Federal Bank in the personal property of the debtors and or Jutz Farms, Inc., listed in above, are void and of no force and effect.

Respectfully submitted,

/e/ Kurt M. Anderson

Kurt M. Anderson # 2148

Attorney for Debtor

P.O. Box 2434

Minneapolis, Minnesota 55402-0434

(612) 333-3185

Declaration of Service via Facsimile

Kurt M. Anderson respectfully declares to that on August 17, 2004, he served the following items:

Notice of Hearing and Motion for Lien Avoidance
Memorandum of Law
Proposed Order
This proof of service

Via facsimile on the following individuals or entities:

Andrew Moratzka	612-305-1414
Paul Bucher, Trustee	507-288-9342
United States Trustee	612-664-5516
United States Attorney	612-664-5788

VERIFICATION

I hereby declare under penalty of perjury that I have read the foregoing declaration; and that the facts stated therein are true and correct.

Executed on: August 17, 2004 _____ /e/ Kurt M. Anderson _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re

Bky. No. 03-37799
Chapter 7 case

James Douglas Jutz and Darleen Marie Jutz

Debtors.

ORDER GRANTING LIEN AVOIDANCE

This matter came before the Court on the motion of the debtors to avoid the liens against their exemption property pursuant to Section 522(f)(1)(B)(ii). Appearances, if any, were noted on the record and the Court stated its findings of fact and conclusions of law on the record. Based upon the moving documents, proceedings, and records,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

That Plaintiff's motion to avoid the liens of First Federal Bank in the Debtors' and/or Jutz Farms, Inc.'s exempt machinery and equipment, as listed below, is hereby granted and all such liens are avoided.

Item	Scheduled value
Baler Square 3x3x8 4755 23000 Fair	\$24,000.00
Shop Tools	\$950.00
John Deere Drill 8350	\$1,500.00
fax machine	\$10.00
Total:	\$26,460.00
	(Debtors will pay trustee or bank \$460.00)

Dated: _____

BY THE COURT:

Hon. Dennis D. O'Brien
United States Bankruptcy Judge