

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-32864-DDO

Chapter 7

James H. Jutz  
Darleen M. Jutz

**REPLY TO DEBTOR'S RESPONSE  
TO FIRST FEDERAL BANK'S  
OBJECTION TO EXEMPTION**

Debtors.

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As the Court is fully aware, Debtors are attempting to exempt real estate, rent proceeds from real estate, farm equipment and crop proceeds from his bankruptcy estate and avoid liens of First Federal Bank, fsb ("First Federal"). For reasons fully explained in First Federal's response ("First Federal's Response") to Debtors' motion for lien avoidance, Debtors cannot exempt farm equipment. First Federal will rest on the assertions made in First Federal's Response and will only address Debtors' arguments in response ("Debtor's Response") to First Federal's objection to exemption, not already addressed in First Federal's Response. Debtors' Response fails to set forth reasons justifying Debtors' claims for exemptions because it misinterprets case law and claims entitlement to property in which Debtors have no interest.

Debtors misinterpret *In re Thompson*, 884 F.2d 1100 (8th Cir. 1989) and its application of *Georgens v. Federal Deposit Insurance Corporation*, 406 N.W.2d 98 (Minn.Ct.App. 1987). In *Thompson*, the Court held that the debtors could avoid a lien notwithstanding a waiver of an exemption. *In re Thompson* at 1103. As quoted in Debtors' response, *Thompson* believes *Georgens* stands for the proposition that "Debtors waives the protections granted by state law in Minn.Stat. § 550.37, subd. 1, by encumbering his or her property." *Id.* at 1102. In other words, Debtors cannot extinguish a

lienholder's rights by claiming an exemption. That holding can be applied in the case at bar in two different circumstances.

First, First Federal has a perfected security interest in the crops and crop proceeds of Jutz Farms, Inc. ("Jutz Farms"), for the 2000 crop year and each crop year thereafter. It appears from Debtors' schedules that all income prior to 2003 came from the farming operations of Jutz Farms. In other words, any money used by Debtors to farm individually in 2003 constituted proceeds of Jutz Farms' operation, in which First Federal has a valid and perfected security interest. Therefore, Debtors cannot extinguish First Federal's security interest by claiming an exemption and their attempt to exempt crop proceeds should be denied.

Second, Debtors may not claim an exemption and extinguish First Federal's rights by exempting property that may be subject to a constructive trust. As stated before, First Federal claims in pending state court litigation that Defendants are in breach of promissory notes and guarantees, and have converted and/or fraudulently transferred assets securing debt to First Federal. First Federal has therefore requested the ability to foreclose on certain property, replevy certain property, and impose a constructive trust on assets purchased with proceeds from the conversion and/or fraudulent transfer of 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. Debtors' claimed exemptions in their homestead and rent proceeds should therefore be denied to the extent it is claimed to cut off First Federal's interest in property that may be subject to a constructive trust.

With regards to the claimed exemption in the option property (the “Property”), Debtors have no interest to exempt. Debtors sold the Property at less than fair market value in order to pay off a mortgage held by First Federal on Debtors’ home and surrounding land. The current right to repurchase is evidence that the sale was to a “straw man,” set up to avoid deficiency obligations owed to First Federal. Regardless, the right to repurchase is not an exemptible interest. While Debtors correctly note that the homestead exemption is to be liberally construed, the interpretation is not to be strained. *Ross v. Simser*, 193 Minn. 407, 410, 258 N.W. 582, 583 (Minn. 1935) (citing *Fred v. Bramen*, 97 Minn. 484, 107 N. W. 159, 114 Am. St. Rep. 740). Cases cited in Debtors’ Response held that a debtor may exempt a one-third remainder interest on land owned by his mother and used by the debtor for farming. *See e.g., In re Stenzel*, 301 F.3d 945 (8th Cir. 2002). Here, although they own an option Debtors do not own the underlying Property, the Property is not owned by a family member, and Debtors have not demonstrated that they are using the Property. A naked option is not exempt under MINN. STAT. § 510.01, *et seq.* Therefore, the exemption should be denied.

As a final note, Debtors’ request to certify these questions to the Minnesota Supreme Court should be denied because Debtors mistakenly asserts that sustaining First Federal’s objections requires the court to narrowly interpret a statute allegedly given a broader construction. As set forth above, denying Debtor’s exemption in homestead, rent proceeds, and crop proceeds fully comports with current case law. Furthermore, denying Debtor’s exemption in farm equipment owned by a corporation fully complies with the plain language of section 550.37 of the Minnesota Statutes. Therefore, Debtor’s request to certify these questions to the Minnesota Supreme Court should be denied.

Dated: August 27, 2004

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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 **Reply to Debtor's Response to First Federal Bank's Objection to Exemption** 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 <sup>th</sup> Street Gibbon, MN 55335	(Attorney for Debtor) Kurt M. Anderson P O Box 2434 Minneapolis, MN 55402-0434  Facsimile: 612-333-4001

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

Dated: September 1, 2004

By /e/ Amy J. Ditty

AJD/ajd#716398v1