

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY 04-33714 DDO

*Jeremy J. Stewart and
Jill M. Stewart,*

Chapter 13 Case

Debtors.

NOTICE OF HEARING AND MOTION OBJECTING TO CLAIMS OF EXEMPTION

TO: All parties in interest pursuant to Local Rule 9013-3.

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 10:30 a.m. on October 6, 2004, in Courtroom No. 228A, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Because this motion is being served by mail 24 days before the date of the hearing on the motion, any response to this motion must be filed and delivered not later than September 29, 2004, which is seven (7) days before the date of the hearing (including Saturdays, Sundays, and holidays), or filed and served by mail not later than September 24, 2004, which is ten (10) days before the date of 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.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 13 case was filed on June 23, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 522 and Bankruptcy Rule 4003(b). This motion is filed under Bankruptcy Rule 9014 and Local Rules 4003-1, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may pertain. Movant requests relief with respect to denial of the Debtors' claims of exemption to real estate and certain personal property.

6. The Debtors have chosen their exempt property under the exemptions available under 11 U.S.C. § 522(b)(1), the "federal exemptions."

7. Under 11 U.S.C. § 522(b)(1), a debtor is allowed to claim as exempt "property that is specified under subsection (d) of this section, unless the state law that is applicable to the

debtor under paragraph (2)(A) of this subsection specifically does not so authorize.

8. Minnesota has not opted out of the federal bankruptcy exemptions.

9. Among other things, the Debtors have claimed as exempt, on their Schedule C on file herein, the following items:

<u>Property</u>	<u>Exemption statute</u>	<u>Value</u>
Real property used as the Debtor's homestead	11 U.S.C. § 522(d)(1)	\$ 29,007.69
Hiway Fed. Cred. Union Checking and Savings	11 U.S.C. § 522(d)(5)	700.00
Household Goods	11 U.S.C. § 522(d)(3)	2,400.00
Wearing Apparel	11 U.S.C. § 522(d)(3)	750.00
Jewelry	11 U.S.C. § 522(d)(4)	1,000.00
Automobile	11 U.S.C. § 522(d)(2)	2,000.00

10. Pursuant to 11 U.S.C. § 522(d)(1), a Debtor may exempt "[t]he debtor's aggregate interest, not to exceed \$18,450 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence..." *11 U.S.C. § 522(d)(1)*.

11. Based upon the petition, the Debtors reside at 7397 Afton Road, Woodbury, Washington County, MN. In Schedule A of the petition, the Debtors value their homestead at \$157,000, encumbered by a first mortgage in favor of Wells Fargo Home Mortgage in the amount of \$114,637.82, and a Home Equity Mortgage in favor of Hiway Federal Credit Union in the amount of \$13,354.49.

12. Based upon Washington County property tax information, for 2004, the homestead was valued for tax purposes at \$190,100. A copy of the Washington County property information is incorporated herein and attached hereto as Exhibit A.

13. Based upon the petition value, the Debtors' equity in their homestead is \$29,007.69. Using the Washington County valuation, their equity is \$62,107. It is the Trustee's position that use of the higher homestead value produces a more accurate assessment of the Debtors' equity in their homestead. Accordingly, based upon the available information, the Debtors' equity in their homestead is \$62,107.

14. It is also the Trustee's position that, based upon an accurate assessment of the Debtors' equity in their homestead, if properly claimed under Minn. Stat. § 510.01, 510.02, requires that \$1,501.25 of the value of the following personal property be considered as non-exempt property: 25% of cash on hand, bank accounts, a snowblower, computer, printer, monitor, household tools, and jewelry.

15. The meeting of creditors pursuant to 11 U.S.C. § 341(a) was first set for July 21, 2004, which is a date 30 days or less from the date of the filing of this motion; therefore, this objection is timely filed according to Bankruptcy Rule 4003(b).

16. If necessary, the Debtors may be called to testify in connection with this motion.

WHEREFORE, the Trustee moves the court for an order denying the Debtors' claims of exemption, as set forth herein, and such other relief as may be just and equitable.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: August 20, 2004

Signed: /e/ Margaret H. Culp
Thomas E. Johnson, ID # 52000
Margaret H. Culp, ID # 180609
Counsel for Chapter 13 Trustee
12 South 6th Street, Suite 310
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Margaret H. Culp, employed by the Chapter 13 Trustee, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: August 20, 2004

Signed: /e/ Margaret H. Culp



Department of
Assessment, Taxpayer
Services and Elections

14949 62nd Street North PO Box 6
Stillwater, MN 55082-0006
(651) 430-6175
www.co.washington.mn.us

**Notice of Valuation and Classification
for Taxes Payable in 2005
- This is NOT a bill -**

This form is to notify you of the market value and classification of your property for assessment year 2004. The property taxes you will pay in 2005 (next year) will be based on this valuation and classification.

Property ID: 08.028.21.34.0012

Property Address: 7397 AFTON RD
Municipality: WOODBURY

Taxpayer: 82005
JEREMY J & JILL M STEWART
7397 AFTON RD
WOODBURY MN 55125

Tax Description:
ROYAL PARK SUBD
LOT-001 BLOCK-001

2003	2004
For the taxes you will pay in 2004	For the taxes you will pay in 2005

Property Classification. The statutory classification that has been assigned to your property based upon your use of the property. A change in classification of your property can have a significant impact on the real estate tax payable. Please compare the 2003 and 2004 classifications. (Note: each parcel of commercial and industrial property has a reduced, "preferred" class rate on the first tier of market value(\$150,000) and a "non-preferred" rate on the remaining market value, except in the case of contiguous parcels owned by the same person or entity. Contiguous properties are classed at the "non-preferred" rate. Please call your assessor for details and exceptions.)

RES HSTD	RES HSTD
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Estimated Market Value. This value is what the assessor estimates your property would likely sell for on the open market. State law requires assessors to value property at 100% of market value.

\$174,100	\$190,100
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Value of New Improvements. This is the assessor's estimate of the value of new or omitted improvements you have made to your property. These improvements are not eligible for limited market value.

Limited Market Value. Limits how much the taxable value of certain properties can increase. With the exception of new improvements, the value is limited to the greater of 1). 15% increase over last year's limited value or 2) 25% of the difference between this year's estimated value and last year's limited value. This only applies to agricultural, residential, timberland, or non-commercial seasonal recreational residential (cabins) property.

\$150,000	\$172,500
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Green Acres Value. Only applies to agricultural property that is facing increasing values due to development pressures not related to the agriculture value of the land. The assessor arrives at this lower value by looking at what comparable agricultural land is selling for in areas where there is not development pressure. The taxes on the higher value are deferred until the property is sold or no longer qualifies for the program.

Plat Deferment. For land that has been recently platted (divided into individual lots) but not yet improved with a structure, the increased market value due to platting is added over a phase-in period. If construction begins before the expiration of the phase-in period, the lot will be assessed at full market value in the next assessment

This Old House Exclusion. Applies only to homestead property 45 years of age or older and valued at less than 400,000. Improvements that increase the estimated market value by 5,000 or more during the 2003 assessment will qualify for this exclusion. Value that has been deferred for 10 years will begin to be phased in with the 2004 assessment.

EXHIBIT A

Taxable Market Value. This is the value that your property taxes are actually based on, after all reductions, limitations, exemptions, and deferrals. Your 2004 value, along with the class rate and the budgets of your local government, will determine how much you will pay in taxes.

0,000 \$172,500

If you believe your valuation and property class are correct, it is not necessary to contact the county or attend the meetings listed below. If the property information is not correct, if you disagree with the values, or if you have other questions about this notice, **please first contact your assessor's office at 651-275-8635 to discuss any questions or concerns.** Often your issues can be resolved at this level.

If your questions or concerns are not resolved, more formal appeal options are available. Please read the back of this notice for important information about the formal appeal process.

Local Board of Appeal and Equalization Meeting

THURS APRIL 29, 2004 7:00 PM - 8:00 PM CITY HALL

To appear call your local assessor at 651-275-8635.

County Board of Appeal and Equalization Meeting

TUESDAY JUNE 15, 2004 GOVERNMENT CENTER STILLWATER, MN

To appear call (651)430-6110 by May 21, 2004.

You must first appeal to the Local Board of Appeal and Equalization before you can appeal to the County Board of Appeal and Equalization.

New Search

[Prop. Characteristics](#)

[Additional Detail](#)

[Payment Information](#)

[Pay Property Tax](#)

[Internet View Map](#)

[2004 Tax Statement](#)

[Back Page of 2004 Tax Statement](#)

[2005 Valuation Notice](#)

[Back Page of 2005 Valuation Notice](#)

[Freq. Asked Questions](#)

[Contact Us](#)

Washington County Property and Tax Information

PROPERTY CHARACTERISTICS

[Print Parcel](#)

Property ID#: 0802821340012

Property Owner:
JEREMY J & JILL M STEWART

Owner Mailing Address:
7397 AFTON RD
WOODBURY, MN 55125

School District:
SO WASH CO ISD 833

Property Address:
7397 AFTON RD
WOODBURY, MN 55125

Municipality:
WOODBURY

Watershed:
RAMSEY-WASH METRO WS

Tax Description:
Lot-001 Block-001 ROYAL PARK SUBD

Last updated:
07/19/2004
00:24:01

Payable 2004 Taxes

2003 Estimated Total Market Value
(Pay 2004):

\$174,100

2003 Taxable Market Value
(Pay 2004):

\$150,000

Payable 2004 Property Taxes
(Includes Special Assessments):

\$1,834.00

Year Built: 1973

Style: N/A

Class:
RESIDENTIAL

Homestead Status:
FULL HOMESTEAD

Escrow Information
WELLS FARGO REAL ESTATE

New Search

The Washington County Online Property Information and Payment site provides access to public information maintained by Washington County for individual parcels of property.

This information is to be used for reference purposes only. Washington County does not guaranty accuracy of the material contained herein and is not responsible for misuse or misinterpretation. For property information not provided on this site, contact Washington County Taxpayer Services by calling 651-430-6175.

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In re:

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*Jeremy J. Stewart and
Jill M. Stewart,*

Chapter 13 Case

Debtors.

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies on the representations made by the Debtors in their verified Schedules and Statements on file and of record herein.

LEGAL DISCUSSION

At issue in this case is the Debtors claim that they are entitled to claim \$29,29,007.69 of equity in their homestead under 11 U.S.C. § 522(d)(1), plus an additional \$1,501.25 in personal property under 11 U.S.C. § 522(d)(3),(4) and (5).

Based upon the values indicated in Schedules A and B of the petition, the Debtors' claims of exemption exceed the amount allowable under 11 U.S.C. §§ 522(d)(1) and certain other personal property is not exemptible under the Minnesota exemption statutes.

As support for her objection to confirmation, in Exhibit A, the Trustee has provided information regarding the valuation of the Debtors' homestead that she reasonably believes is a more accurate assessment of the Debtors' actual equity in their homestead. It follows that if the Debtors' equity in their homestead is \$62,107, their claim of exemption for their homestead equity under 11 U.S.C. § 522(d)(1) exceeds the allowable amount available under that portion of the federal statute, and exemption of other personal property, specifically 25% of cash on hand and bank accounts, a snowblower, a computer, printer, and monitor, household tools, and jewelry is not available under the Minnesota Statute.

CONCLUSION

Based upon the foregoing, the Trustee's objection to claimed exempt property must be sustained.

WHEREFORE, the Trustee moves the Court for entry of an order sustaining her objection.

Dated: August 20, 2004

Respectfully submitted:

Jasmine Z. Keller, Trustee

Signed: /e/ Margaret H. Culp

Thomas E. Johnson, #52000

Margaret H. Culp, #180609

12 South Sixth Street, Suite 310

Minneapolis, MN 55402

Counsel for Chapter 13 Trustee

612-338-7591

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on August 20, 2004, I served Notice of Hearing and Motion Objecting to Claim of Exemption, and proposed Order, on the individual(s) listed below, in the manner described:

By electronic means:

United States Trustee
612-664-5616

Craig W. Andresen, Esq.
952-835-1554

By first class U.S. mail, postage prepaid:

Jeremy J. Stewart
Jill M. Stewart
7397 Afton Road
Woodbury, MN 55125

Craig W. Andresen, Esq.
2001 Killebrew Drive, Ste. 330
Bloomington, MN 55425

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

Executed: August 20, 2004

/e/ Margaret H. Culp

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ORDER DENYING EXEMPTION CLAIM

At St. Paul, MN, _____, 2004.

The above-entitled matter came before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to the Debtors' claims of exemption for \$29,007.69 in equity in real property used as a homestead under 11 U.S.C. § 522(d)(1) and personal property, specifically, 25% of cash on hand, 25% of Checking and Savings Accounts at Hiway Federal Credit Union, snowblower, computer, printer, monitor, household tools, and jewelry valued collectively at \$1,501.25 under 11 U.S.C. § 522(d)(3)(4) and (5).

Appearances, if any, were noted in the minutes.

Upon the foregoing record,

IT IS ORDERED:

The Trustee's objection to the Debtors' claims of exemption is SUSTAINED.

Dated _____, 2004.

Dennis D. O'Brien
United States Bankruptcy Judge