

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In Re:

Case No. 04-33745  
Chapter 7 Case

Tuan N. Nguyen,

Debtor(s).

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

-----  
To: The debtor(s) and other entities specified in Local Rule 1204(a).

1. Michael J. Iannacone moves the court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 10:00 a.m. on October 25, 2004, in Courtroom 228A, United States Court House, at 316 North Robert Street, in St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered not later than October 18, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 15, 2004, which is ten (10) days before the time set for the hearing (excluding 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 7 case was filed on June 25, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §522 and Bankruptcy Rule 4003. This motion is filed under Bankruptcy Rule 9014 and Local Rules 4003-1, 9006-1 and 9013-1 to 9013-3. Trustee requests the Court to determine the property of the debtor as set forth herein is not exempt.

6. Trustee objects to the following property being claimed exempt:

The following property is itemized on a property insurance claim settlement worksheet with the actual cash value and amount proposed to be paid on the property by the insurance company.

Honda lawn mower	\$ 595.83
Nikon digital camera	\$ 446.62
JVC digital camera	\$ 559.34
Pioneer DVD player	\$ 239.63
Hitachi VCR player	\$ 126.95
Sony receiver	\$ 725.74
Klipsh speakers	\$ 1,614.54
Sony flat screen TV	\$ 888.00
Compaq laptop	\$ 1,065.00
X-box	\$ 127.79
PSII	\$ 133.22
20 DVD's	\$ 361.92
Movado watch	<u>\$ 585.00</u>
<b>Total</b>	<b>\$7,469.58</b>

7. The basis for the objection is as follows:

Debtor failed to disclose the insurance claim, which was neither listed on Schedule B nor on Schedule C as an insurance claim or as property of the estate. Debtor has now claimed exempt all the property listed as household goods. American Family Insurance Company contacted the Trustee regarding the theft claim and has been placed on notice as to the Trustee's interest in the insurance proceeds.

Property discovered by the Trustee after the commencement of the case, which has been concealed by the Debtor cannot be later claimed exempt. See *In Re Bauer*, 298 B.R. 353; (8<sup>th</sup> Cir. 2003 (B.A.P. 8<sup>th</sup> Cir. 2003)).

8. If the court determines an evidentiary hearing is required, be advised that the court may treat the hearing scheduled above as a scheduling conference and schedule an evidentiary hearing for a subsequent date.
9. That in the event testimony is necessary, Trustee may testify individually as well as call the debtor(s) for cross examination pursuant to Federal Rules of Civil Procedure.

**WHEREFORE**, Michael J. Iannacone moves the court for an order sustaining Trustee's Objection and such other relief as may be just and equitable.

Dated: September 23, 2004

\_\_\_/e/ Michael J. Iannacone \_\_\_  
Michael J. Iannacone, #48719  
Attorney for the Trustee  
8687 Eagle Point Blvd.  
Lake Elmo, MN 55042  
(651) 224-3361

Verification. I, Michael J. Iannacone, the moving party 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 September 23, 2004

\_\_\_/e/ Michael J. Iannacone \_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In Re:

Bankruptcy 04-33745  
Chapter 7 Case

Tuan N. Nguyen,

**UNSWORN CERTIFICATE  
OF SERVICE**

Debtor(s).

-----  
I, Krisann Treague, employed by Michael J. Iannacone, attorney licensed to practice law in this Court, with office address of 8687 Eagle Point Blvd., Lake Elmo, Minnesota, declare that on September 23, 2004, I mailed copies of the **NOTICE OF HEARING AND MOTION ON OBJECTION TO CLAIMED EXEMPT PROPERTY WITH PROPOSED ORDER** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

-----  
United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Mpls., MN 55415

Tuan N. Nguyen  
352 Parkview Lane S.  
Maplewood, MN 55119

Michael C. Mjoen, Esq.  
7825 Washington Ave. #500  
Bloomington, MN 55439  
-----

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

Executed on: September 23, 2004

\_\_\_\_/e/ Krisann Treague\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In Re:

Bankruptcy 04-33745  
Chapter 7 Case

Tuan N. Nguyen,

**ORDER**

Debtor(s).

-----  
At St. Paul, Minnesota.

The above-entitled matter came duly on for hearing before the undersigned Judge of Bankruptcy Court upon the objection of the trustee to certain property claimed exempt by the debtor(s). Michael J. Iannacone, Esq., appeared on behalf of the bankruptcy estate of the debtor(s) above named and other appearances are as noted in the record. Upon all the files, records and proceedings herein and the Court being duly advised in the premises,

**IT IS HEREBY ORDERED** as follows:

1. That the objection of the trustee to the claim of exemption to the following described property:  
  
Insurance proceeds in the amount of \$7,469.58  
  
is hereby **SUSTAINED**.
2. The debtor(s) are hereby ordered to forthwith surrender said asset to the trustee and to cooperate in all respects with the trustee's collection and liquidation of same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Dennis D. O'Brien, Judge  
United States Bankruptcy Court