

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

JAMES R. & KATHLEEN A. SCHMIDT,

Debtors

Bankruptcy No. 04-33797
Chapter 7

NOTICE OF MOTION AND MOTION
OBJECTING TO CLAIMED
EXEMPTION

TO: The Debtors and of her entities specified in Local Rule 9013-3.

1. Michael S. Dietz, Trustee of the above bankruptcy estate moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this Motion on October 21, 2004, at 10:00 a.m., in Courtroom 228A, United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this Motion must be filed and delivered not later than 10:00 a.m. on October 14, 2004, which is seven days before the hearing, or filed and served by mail not later than October 11, 2004, which is ten 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, 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 29, 2004. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §§ 522, Bankruptcy Rule 4003 and Local Rule 4003-1(a). This Motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, and 9013-5.

6. The Debtors have scheduled Checking accounts with Bremer Bank (Account Nos. 31675, 320242 and 642660), Minnwest Bank account, two firearms, ½ interest in non-homestead real property and ½ interest in Redwood Band Instrument and Repair, 1961 - 16' boat and trailer, 1986 Sylvan boat w/ 50 hp Mercury motor and trailer, miscellaneous instrument repair equipment and miscellaneous inventory. All the above property is claimed as exempt under 11 U.S.C. § 522(d)(5). Attached as Exhibit "A" is a true and correct copy of Schedule C filed in this case.

7. Movant objects to the above noted exemptions claimed in that schedule for the following reasons: The actual value of the property claimed as exempt under 11 U.S.C. § 522(d)(5) exceeds the allowable exemption for one Debtor. The actual bank balances in the accounts exceed the scheduled values by approximately \$9,409.55. In addition, the trustee is without sufficient information to determine the actual values of the miscellaneous instrument repair equipment and inventory.

WHEREFORE, the Trustee moves the Court for an Order denying the claimed exemption of the Checking accounts with Bremer Bank (Account Nos. 31675, 320242 and 642660), Minnwest Bank account, two firearms, ½ interest in non-homestead real property and

½ interest in Redwood Band Instrument and Repair, 1961 - 16' boat and trailer, 1986 Sylvan boat w/ 50 hp Mercury motor and trailer, miscellaneous instrument repair equipment and miscellaneous inventory.

Dated: September 17, 2004

/e/ Michael S. Dietz

Michael S. Dietz
Registration No. 188517
DUNLAP & SEEGER, P.A.
Attorneys for Trustee
206 S. Broadway, Suite 505
Post Office Box 549
Rochester, Minnesota 55903
Telephone: (507) 288-9111

VERIFICATION

I, Michael S. Dietz, Trustee, 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 17, 2004

/e/ Michael S. Dietz

Michael S. Dietz, Trustee
206 S. Broadway, Suite 505
Post Office Box 549
Rochester, Minnesota 55903
Telephone: (507) 288-9111

IN RE JAMES RAPHAEL SCHMIDT & KATHLEEN AMY SCHMIDT
 Debtors

Case No.

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled to:

Check one box

11 U.S.C. § 522(b)(7) Exemptions provided in 11 U.S.C. § 522(d), NOCL: These exemptions are available only in certain states.

11 U.S.C. § 522(b)(2) Exemption available under applicable nonbankruptcy Federal, local, state or local law where the debtor's domicile has been located for 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest is claimed by the entity or person to be exempt; the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
SCHEDULE A - REAL PROPERTY			
HOMESTEAD: LOT 9, AUDITOR'S SUBDIVISION 1, REDWOOD COUNTY, REDWOOD FALLS, MN	11 USC § 522(d)(1)	1.00	78,100.00
SHOP PROPERTY: AN UNDIVIDED ONE-HALF INTEREST IN LOT 7 AND THE WEST 50' OF THE NORTH 30' OF LOT B, BLOCK 2, LAMBERTON'S ADDITION TO REDWOOD FALLS, REDWOOD COUNTY, MN	11 USC § 522(d)(5)	5,000.00	5,000.00
SCHEDULE B - PERSONAL PROPERTY			
CHECKING ACCT. BREMER BANK #31875	11 USC § 522(d)(5)	100.00	100.00
CHECKING ACCT. BREMER BANK #320242	11 USC § 522(d)(5)	100.00	100.00
MINNWEST BANK - REDWOOD FALLS	11 USC § 522(d)(5)	150.00	150.00
SAVINGS ACCT. BREMER BANK #842660	11 USC § 522(d)(5)	1,000.00	500.00
MISC. HOUSEHOLD GOODS AND FURNISHINGS	11 USC § 522(d)(3)	3,000.00	3,000.00
MISC WEARING APPAREL	11 USC § 522(d)(3)	200.00	200.00
2 WATCHES, WEDDING RINGS, & WEARABLE JEWELRY	11 USC § 522(d)(4)	800.00	800.00
10 GAUGE SHOTGUN	11 USC § 522(d)(5)	75.00	75.00
12 GAUGE SHOTGUN	11 USC § 522(d)(5)	150.00	150.00
FORESTERS POLICY	11 USC § 522(d)(7)	5,255.00	5,255.00
FARM BUREAU IRA ANNUITY #887585F	11 USC § 522(d)(10)(E)	1,392.00	1,392.00
FARM BUREAU IRA #3939916901	11 USC § 522(d)(10)(E)	2,662.00	2,662.00
1/2 INTEREST IN REDWOOD BAND INSTRUMENT & REPAIR, AN UNINCORPORATED BUSINESS OWNED WITH CHARLES SCHMIDT	11 USC § 522(d)(5)	1.00	1.00
1996 CHRYSLER CONCORD	11 USC § 522(d)(2)	2,850.00	2,850.00
2003 CHEVY TRAILBLAZER	11 USC § 522(d)(2)	1.00	20,000.00
1961 16' BOAT AND TRAILER	11 USC § 522(d)(5)	200.00	200.00
1986 SYLVAN BOAT W/50 HP MERCURY AND TRAILER	11 USC § 522(d)(5)	2,000.00	2,000.00
DAYCARE TOYS AND OTHER EQUIPMENT	11 USC § 522(d)(5)	500.00	500.00
MISC. INSTRUMENT REPAIR EQUIPMENT	11 USC § 522(d)(5)	3,200.00	5,000.00
	11 USC § 522(d)(5)	1,800.00	
MISC. INVENTORY	11 USC § 522(d)(5)	1,750.00	1,750.00

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SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bankruptcy Case No. 04-33797

JAMES R. & KATHLEEN A. SCHMIDT,

Debtors.

UNSWORN CERTIFICATE OF SERVICE

I, Julie C. Johnson, declare under penalty of perjury that on September 17, 2004, I mailed copies of the following:

Trustee's Notice of Motion and Motion Objecting to Claimed Exempt Property
by US Mail, postage pre-paid, to each entity named below at the address stated below:

OFFICE OF THE US TRUSTEE
1015 UNITED STATES COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

JAMES R. & KATHLEEN A. SCHMIDT
125 SUNRISE BLVD
REDWOOD FALLS MN 56283

THOMAS VAN HON
PO BOX N
FAIRFAX MN 55332

Executed on September 17, 2004

Signed:



Julie C. Johnson
DUNLAP & SEEGER, P.A.
P O BOX 549
ROCHESTER MN 55903-0549
(507) 288 9111

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

Bky Case No. **04-33797**
Chapter 7

**JAMES R. & KATHLEEN A.
SCHMIDT,**

Debtor

**ORDER SUSTAINING TRUSTEE'S
OBJECTION TO DEBTORS' CLAIM
OF EXEMPTION**

AT ST. PAUL, MINNESOTA,

This Chapter 7 case came on before the Court on October 21, 2004, for a hearing on the Trustee's objection to the Debtor's claimed exemption of the following property:

Checking accounts with Bremer Bank (Account Nos. 31675, 320242 and 642660), Minnwest Bank account, two firearms, ½ interest in non-homestead real property and ½ interest in Redwood Band Instrument and Repair, 1961 - 16' boat and trailer, 1986 Sylvan boat w/ 50 hp Mercury motor and trailer, miscellaneous instrument repair equipment and miscellaneous inventory

Appearances, if any, were noted on the record. Upon the documents on file herein and the arguments of counsel:

IT IS HEREBY ORDERED AND DETERMINED:

1. The Trustee's objection is sustained.
2. The Debtor's interest in the Checking accounts with Bremer Bank (Account Nos. 31675, 320242 and 642660), Minnwest Bank account, two firearms, ½ interest in non-homestead real property and ½ interest in Redwood Band Instrument and Repair, 1961 - 16' boat and trailer, 1986 Sylvan boat w/ 50 hp Mercury motor and trailer, miscellaneous instrument repair equipment and miscellaneous inventory are not exempt and are property of the bankruptcy estate to be administered by the Trustee in due course.

Dated: October __, 2004

BY THE COURT:

Dennis D. O'Brien
United States Bankruptcy Judge