

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

GIESLER, DUANE AND CHRISTINE,

**Bankruptcy No. 04-33851
Chapter 7**

Debtors

**NOTICE OF MOTION AND MOTION
OBJECTING TO CLAIMED
EXEMPTION**

TO: The Debtors and other 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 20, 2004, at 2:30 p.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 2:30 p.m. on October 13, 2004, which is seven days before the hearing, or filed and served by mail not later than October 10, 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 30, 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 claimed an exemption in their homestead valued at \$140,000 under 11 USC § 522(d)(1). The property is subject to a valid mortgage in favor of Wells Fargo Bank in the amount of \$155,092. Attached as Exhibit "A" is a true and correct copy of Schedule C filed in this case.

7. Movant objects to the above noted exemption claimed in that schedule for the following reasons: The Trustee believes the value of the homestead is \$178,000. Attached hereto as Exhibit "B" is a true and correct copy of the appraisal. Accordingly, the actual equity in the property exceeds the allowable exemption.

WHEREFORE, the Trustee moves the Court for an Order denying the claimed exemption of the homestead.

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 DUANE HENRY GIESLER

CHRISTINE GIESLER

Case No. _____

Debtor.

(If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under:

(Check one box)

- 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**
- 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 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 as a tenant by the entirety or joint tenant to the extent 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 |
|--|--|----------------------------|---|
| 1991 CHEVY CORSICA | 11 USC § 522(d)(5) | 100.00 | 100.00 |
| 1991 CHRYSLER NEW YORKER | 11 USC § 522(d)(2) | 100.00 | 100.00 |
| 1999 BLAZER | 11 USC § 522(d)(2) 11 USC § 522(d)(5) | 2,950.00 3,050.00 | 6,000.00 |
| Cash On Hand | 11 USC § 522(d)(5) | 10.00 | 10.00 |
| ESTIMATED TAX REFUND | 11 USC § 522(d)(5) | 2,175.00 | 2,175.00 |
| HOMESTEAD LOCATED AT 220 MARY LANE, MANKATO, MN AND LEGALLY DESCRIBED AS SCHAEFER S SUBDIVISION NO. 2 OF PART OF SW 1/4 OF SEC. 33-109-26, ACCORDING TO THE PLAT THEREOF CON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER FOR BLUE EARTH COUNTY, MINNESOTA. | 11 USC § 522(d)(1) | 15,000.00 | 140,000.00 |
| HOUSEHOLD GOOD AND FURNISHINGS | 11 USC § 522(d)(3) | 2,025.00 | 2,025.00 |
| JOINT ACCRUED WAGES | 11 USC § 522(d)(5) | 2,000.00 | 2,000.00 |
| MANKATO OPTICAL INC 1400 MADISON AVE SUITE 338 MANKATO, MN 56001 (1000 SHARES) | 11 USC § 522(d)(5) | 1,000.00 | 0.00 |
| NORTHERN STAR BANK 1650 MADISON AVE MANKATO, MN 56001 (DEPOSITS) | 11 USC § 522(d)(5) | 303.82 | 303.82 |
| WEARING APPAREAL | 11 USC § 522(d)(3) | 100.00 | 100.00 |

FORM B6C
(6/90)

In re DUANE HENRY GIESLER

CHRISTINE GIESLER

Case No. _____

Debtor.

(if known)

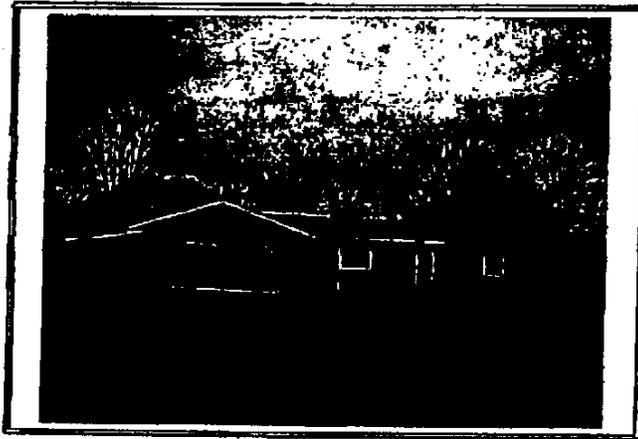
SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

| DESCRIPTION OF PROPERTY | SPECIFY LAW PROVIDING EACH EXEMPTION | VALUE OF CLAIMED EXEMPTION | CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS |
|---|--------------------------------------|----------------------------|---|
| WELLS FARGO BANK 1600 MADISON AVE MANKATO, MN 56001 (DEPOSIT OF INSURANCE CLAIM CHECKS) | 11 USC § 522(d)(5) | 8,065.19 | 8,065.19 |

**Valuation Information Technologies, Inc.
Summary Appraisal Report**

08905438
Fax No. 20033167200454

APPRAISAL OF



Single Family Appraisal

LOCATED AT:

220 MARY LANE
MANKATO, MN 56001

FOR:

WFB - Des Moines MECC AU 14220
Wells Fargo Bank
West Des Moines, IA 50266

BORROWER:

CHRISTINE GIESLER

AS OF:

November 20, 2003

BY:

BRIAN SCHULTZ
#4002302

EXHIBIT "B"



Valuation Information Technology

08906436

Desktop Underwriter Quantitative Analysis Appraisal Report

File No: 20033167200-00-01

THIS SUMMARY APPRAISAL REPORT IS INTENDED FOR USE BY THE LENDER/CLIENT FOR A MORTGAGE FINANCE TRANSACTION ONLY.

Property Address: 220 MARY LANE, City: MANKATO, State: MN, Zip Code: 56003. Lead Description: Schroeder's Subd No 2 L of 12 Block 21on Exc MN HWY 22. Assessor's Parcel No: R40.04.33.382.013. Tax Year: 2003. R.E. Taxes: 1,972.00. Special Assessment: 5.20. Borrower: CHRISTINE GIESLER. Owner: Christine Giesler. Project Type: SFD. Census Tract: 66001.

Location: Suburban. Property values: Increasing. Single family housing price: 800. Neighborhood description: This home is located outside the north edge of Mankato approx. 1/2 mile. Dimensions: 125 x 180. Specific zoning classification: Rural Residential Single Family. Highest and best use: Present use.

Table with 4 columns: FEATURE, SUBJECT, SALE 1, SALE 2, SALE 3. Rows include 220 MARY LANE, 100 ICABOD LANE, 42424 KERNS DRIVE, 204 TERRACE VIEW W.

Table with 4 columns: DESCRIPTION, SUBJECT, SALE 1, SALE 2, SALE 3. Rows include Sales Price, Price/Gross Ltr. Area, Date of Sale, Location, Size, Year Built, Condition, Above Grade, Room Count, Gross Ltr. Area, Basement and Finished, Rooms Above Grade, Grounds/Carport, Deck, Carport, Net Adj. (total), Adjusted Sales Price of Comparables, Date of Prior Sales, Price of Prior Sales.

Analysis of any current agreement of sale, option, or listing of the subject property and analysis of the prior sales of subject and comparables: See Attached Addendum. Summary of latest comparison and value conclusion: Comparables used were felt to be the best available in the most recent Subject Area Sales Market. All comps sold within the past 12 months. All comps were within recommended gross and net adjustment guidelines. Consideration was given to all comps in this appraisal.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bankruptcy Case No. 04-33851

DUANE AND CHRISTINE GIESLER,

Debtors.

UNSWORN CERTIFICATE OF SERVICE

I, Emily D. Stenhoff, 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 Exemption

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

MARK C. HALVERSON
HALVERSON LAW OFFICE
600 SOUTH SECOND STREET
PO BOX 2544
MANKATO MN 56002

DUANE AND CHRISTINE GIESLER
220 MARY LN
MANKATO MN 56001

Executed on September 17, 2004

Signed: 

Emily D. Stenhoff
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:

GIESLER, DUANE AND CHRISTINE,

Bky Case No. **04-33851**
Chapter 7

Debtors

**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 20, 2004, for a hearing on the Trustee's objection to the Debtor's claimed exemption of the following property:

Homestead legally described as Schaefer's Subdivision No. 2 of part of SW ¼ of Sec. 33-109-26

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 homestead is not exempt and is property of the bankruptcy estate to be administered by the Trustee in due course.

Dated: September __, 2004

BY THE COURT:

Dennis D. O'Brien
United States Bankruptcy Judge