

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bankruptcy No. 04-34775-GFK

Brent Hogberg

OBJECTION TO EXEMPTION

Debtor.

Lea Wulf f/k/a Lea Wulf Hogberg (“Wulf”), judgment creditor of debtor Brent Hogberg (“Hogberg”), objects to the debtor’s claim of a homestead exemption in residential real property located at 14715 – 62nd Street, Stillwater, Minnesota 55082, and legally described as follows on Hogberg’s Voluntary Petition, to-wit:

Apartment Ownership 15, Summit Park, Apartment 2, 2nd floor, Building 7, Apartment Ownership #15, Summit Park Condominiums, Washington County, Minnesota (“Property”),

to the extent that this claim of a homestead exemption seeks to defeat or impair, or otherwise adversely affect, Wulf’s judgment lien against the Property.

A hearing has been set before The Honorable Gregory F. Kishel on November 22, 2004, at 1:30 p.m. at the U.S. Bankruptcy Court, U.S. Courthouse Room 228B, 316 N. Robert Street, St. Paul, MN 55101.

The grounds for this objection are as follows:

1. Wulf and Hogberg were married on August 12, 2000, in the State of Minnesota. Shortly thereafter, Wulf and Hogberg moved to Sante Fe County, New Mexico, and resided therein. The parties were divorced pursuant to a judgment entered August 15, 2003, in the First Judicial District Court, Sante Fe County, New Mexico (“Divorce Judgment”). Attached hereto and incorporated herein as **Exhibit “A”** is a true and correct copy of the Divorce Judgment.

2. The Divorce Judgment was docketed in the Office of the Court Administrator, Washington County District Court, Stillwater, Minnesota, on September 19, 2003. Attached hereto and incorporated herein as **Exhibit "B"** is a true and correct copy of a Foreign Judgment Filing Notice.

3. The Divorce Judgment ordered, among other things, Hogberg to pay to Wulf the aggregate amount of Twelve Thousand Eight Hundred Ninety Two and 48/100 Dollars (\$12,892.48), plus additional interest which continues to accrue at the daily rate of eight and three quarters percent (8.75%) from April 10, 2002. As of the date of this Objection to Exemption, the total amount due and owing from Hogberg to Wulf is Fifteen Thousand Seven Hundred Twenty Two and 92/100 Dollars (\$15,722.92) ("Judgment Amount").

4. At the meeting of creditors held September 14, 2004, Hogberg stated that he moved into the Property sometime in November of 2003. Attached hereto and incorporated herein by reference as **Exhibit "C"** is a true and correct partial copy of the transcript of the meeting of creditors.

5. Pursuant to Minnesota Statutes § 548.09, from the time of docketing a judgment, the judgment is a lien, in the amount unpaid, upon all real property in the County then or thereafter owned by the judgment debtor. Under this statute, the Judgment became a lien on the Property.

6. At the time of docketing of the Divorce Judgment, Hogberg did not reside in the Property or claim it as his homestead. Mr. Hogberg has admitted that he moved into the Property after the Divorce Judgment was docketed in Washington County, and became a lien on the Property.

7. On or about August 16, 2004, Hogberg filed his Chapter 7 Voluntary Petition. A review of Schedule C, Property Claimed as Exempt, shows that Hogberg listed the Property as exempt under Minnesota Statutes §§ 510.01 and 510.02, which set forth the homestead exemption in the State of Minnesota. Section 510.01 provides in part:

The house owned and occupied by a debtor as the debtor's dwelling place, together with the land upon which it is situated to the amount of area and value hereinafter limited and defined, shall constitute the homestead of such debtor. . . .

Section 510.02 provides in part:

. . . If the homestead is within the laid out or platted portion of a city, its area must not exceed one-half of an acre. The value of the homestead exemption . . . may not exceed \$200,000. . . .

11. On the date of docketing the Divorce Judgment in Washington County, Minnesota, the Property was not the homestead of Hogberg. The Property was not owned and occupied by Hogberg as Hogberg's dwelling place. That did not occur until sometime in November 2003.

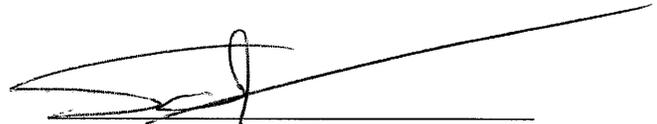
12. As against the lien created by the Divorce Judgment on the Property ("Judgment Lien"), Hogberg cannot convert non-homestead property to homestead property and defeat the valid Judgment Lien. The Judgment Lien validly attached, and was completely perfected, prior to any homestead claim arising in the Property.

13. Wulf has a right to enforce the Judgment Lien as against the Property.

Based on the above and foregoing, Lea Wulf, Judgment Creditor, objects to Brent Hogberg's claimed homestead exemption, to the extent that this claimed exemption seeks to defeat or impair Wulf's Judgment Lien against the Property.

Dated: October 14, 2004

Anastasi & Associates, P.A.

A handwritten signature in black ink, appearing to read 'Samuel E. Surface', is written over a horizontal line. The signature is stylized and extends above the line.

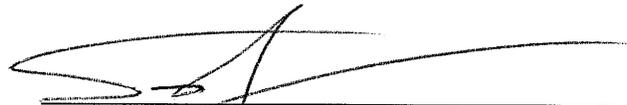
Samuel E. Surface, #312976
Attorneys for Plaintiff
6120 Oren Avenue North
Stillwater, MN 55082
(651) 439-2951

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by me,
by first-class mail and facsimile, this 15th day of October, 2004, upon the following individuals:

Urosh Piletich, Esq.
Piletich & Skokan, P.A.
1675 S. Greeley Street, Suite 100
Stillwater, MN 55082

Nauni Jo Manty
Bankruptcy Trustee
Rider Bennett LLP
333 S. 7th Street, Suite 2000
Minneapolis, MN 55402



Samuel E. Surface

ENDORSED
First Judicial District Court

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

AUG 15 2003

Cause No. D-0101-DM-2002-00090

Santa Fe, Rio Arriba &
Los Alamos Counties
Post Box 2228
Santa Fe, NM 87504-2228

LEA WULF,
F/K/A LEA WULF HOGBERG,
Petitioner,

vs.

BRENT HOGBERG,
Respondent.

JUDGMENT

THIS MATTER coming on before the Court for trial on the merits and the parties having presented their evidence arguments and requested Findings and Conclusions of Law and the Court having entered its Findings and Conclusions herein, in accordance with those Findings and Conclusions, the Court enters judgment as follows:

IT IS HEREBY ORDERED ADJUDGED AND DECREED:

1. Mr. Hogberg shall, within ten days of entry of this Judgment, return to Ms. Wulf her photographs, photo albums and VHS videotapes that he has admitted removing from the Santa Fe residence; and that he has admitted that he would return, but has not.
2. Mr. Hogberg owes Ms. Wulf \$3,088.03 to reimburse her one-half the community liens on the Minnesota residences (\$8,676.05), after off-setting the \$1,250 owed to him for the community lien on the Santa Fe residence. A judgment lien is hereby issued against Mr. Hogberg's two residences in Minnesota, in the amount of \$3,088.03, bearing pre- and post-judgment interest at 8.75% from April 10, 2002,



COPY

- as her one-half of the community liens on both of the parties' residences as a result of principal paydown during the marriage, after Mr. Hogberg receives his off-set.
3. The 1975 Chevrolet Corvette is Ms. Wulf's separate property from before the marriage; there are no community liens on this property; and the car should be returned to Ms. Wulf at Mr. Hogberg's expense, within ten days of entry of this Judgment to her attorneys' office located at 150 Washington Ave., Santa Fe, NM 87501. Mr. Hogberg should be required to retitle the Corvette into Ms. Wulf's name, and produce the corrected title to her within ten days of entry of this Judgment.
 4. The work done by Mr. Hogberg on Ms. Wulf's Santa Fe residence was either in the nature of repairs or maintenance, or of *de minimus* value, and did not add any measurable value to the residence.
 5. There is no community lien against Ms. Wulf's Santa Fe residence as a result of any work done by Mr. Hogberg. As the court stated, in Martinez v. Block, 115 N.M. 762, 858 P.2d 429 (Ct. App. 1993), the question is not whether significant funds or labor were expended on the separate property; the question is whether the labor contributed to an increase in value." Mr. Hogberg has not proven his case with substantial evidence that his labor contributed to any measurable increase in value to Ms. Wulf's home.
 6. Mr. Hogberg owes Ms. Wulf \$4,784.00 as her one-half of the community liens against his NPFA IRA and against his Edward Jones Investment account. $[(\$291/\text{month} \times 23 \text{ months of marriage} = \text{community lien of } \$6,693.00) + [\$125/\text{month} \times 23 \text{ months of marriage} = \text{community lien of } \$2,875.00] = \$9,568$

community lien), payable within ten days of this judgment. A judgment lien is hereby issued against Mr. Hogberg's two residences in Minnesota, in the amount of \$4,784.00, bearing pre- and post-judgment interest from April 10, 2002, as her one-half of the community lien as a result of the deposits Mr. Hogberg made into investment accounts during the marriage.

7. Mr. Hogberg owes Ms. Wulf \$5,020.45 in attorneys' fees and costs as a result of discovery issues, which is detailed in the attorneys' fee affidavit currently pending before the court. A judgment lien is hereby issued against Mr. Hogberg's two residences in Minnesota, in the amount of \$5,020.45, bearing pre-and post-judgment interest at 8.75% from April 10, 2002.
8. The parties shall receive the property currently in his or her possession, including award of the Corvette back to the Petitioner.
9. Respondent is awarded the following community property which shall be returned within ten days of entry of this Judgment:
 - a. One half of the Nambe ware, Stucben vase, Sandstone bowl, Blown glass, vases, crystal wedding gifts;
 - b. Book case made for the Bayport home;
 - c. Blue Fiesta dish ware;
 - d. Wood bowl;
 - e. Parrish Picture;
 - f. Watercolor painting; and,
 - g. Cookie jar;

10. Respondent is awarded all of his separate property.
11. Petitioner is awarded all of her separate property.
12. A mutual restraining order prohibiting the parties from contacting each other direct or through third parties, and a reasonable prohibition against being in public places at the same time should be issued because both parties have requested it.

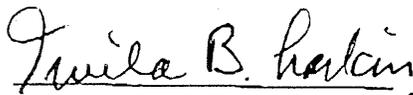
IT IS FURTHER ORDERED that the issue on attorneys' fees is reserved. The parties may submit their request for fees by affidavit.

DANIELA SANCHEZ

DISTRICT JUDGE

APPROVED:

WALTHER & LARKIN, LLP

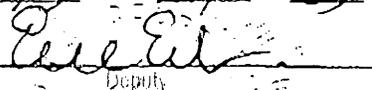

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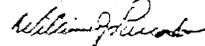
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I hereby certify that the foregoing pleading is a true and correct copy of same which has been filed in my office on the 15 day of August 03
Dated this 15 day of August 03

By



Deputy



Court Administrator/District Court Clerk

STATE OF MINNESOTA
COUNTY OF WASHINGTON

TENTH JUDICIAL DISTRICT
Stillwater, MN

Case Number: 82-C1-03-005836
Case Title: LEA WULF et al.
vs. BRENT HOGBERG

FOREIGN JUDGMENT FILING NOTICE

TROY JOHN EICKHOFF
ANASTASI & ASSOCIATES
6120 OREN AVE NORTH
STILLWATER MN 55082

TO THE JUDGMENT DEBTOR:

YOU ARE HEREBY NOTIFIED that on SEPTEMBER 19, 2003, the
above entitled foreign judgment was filed & docketed in the office
of the Court Administrator, Washington County District Court,
Stillwater, Minnesota.

YOU ARE FURTHER NOTIFIED that the name and post office address
of the Judgment Creditor is:

LEA WULF

and the name and post office address of the attorney for the
Judgment Creditor is:

TROY J EICKHOFF
ANASTASI & ASSOCIATES
6120 OREN AVE N
STILLWATER MN 55082

CHRISTINA M. VOLKERS
COURT ADMINISTRATOR

BY: BC
DEPUTY

Dated: 09/19/2003

EXHIBIT

B

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1 A Not that I know of.
 2 **Q The 1978 Cadillac, what condition is that in?**
 3 A Blown up, quite rusty, and it hasn't been driven for
 4 three years, or licensed.
 5 **Q How about the 1979 Volvo?**
 6 A It's pretty much waiting to get the money to have it
 7 towed away for scrap.
 8 **Q And your home's worth 110,000, your condo?**
 9 A At best.
 10 **Q And you owe, what?**
 11 A I'm not sure. It's less than 10,000. I've owned it
 12 since 1978.
 13 **Q The 1974 Starcraft fishing boat with trailer, what**
 14 **condition is that in?**
 15 A Hasn't been run for two years or licensed, but it's
 16 a fishing boat. It's a \$300 boat.
 17 **Q You haven't filed tax returns since 2001?**
 18 A I -- in order to get (inaudible) and for this
 19 proceeding, I have been getting them done. And I
 20 supplied my attorney and let him mail my 2002, and
 21 my 2003 was supposedly mailed from Florida on
 22 Friday, so I assume we're going to see it this week.
 23 **Q Any refunds on the 2002?**
 24 A Not that I know of.
 25 MR. PILETICH: Well, there might be a

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1 refund. There was -- when he last filed, Brent
 2 had elected to have some money apply towards
 3 his next tax filing, and that hadn't happened
 4 till this year, so --
 5 MS. MANTY: Okay. 'Cause I have --
 6 MR. PILETICH: There's 1187 that's showing
 7 on here.
 8 MS. MANTY: Okay. Do you have copies for
 9 me? And this is the 2002, correct?
 10 A Yes.
 11 **Q (By Ms. Manty, continuing) Then you're in process**
 12 **-- did your accountant, or whoever is doing them,**
 13 **did he or she tell you what's going to come back to**
 14 **you for 2003?**
 15 A Not exactly. But he said -- he said they would be
 16 here today or tomorrow or yesterday.
 17 **Q All right. So when you get those returns, you need**
 18 **to turn them over to me. And I understand that**
 19 **those are your only copies, you want to keep them**
 20 **for the file, but I need copies of those --**
 21 MR. PILETICH: Oh, yes.
 22 **Q (By Ms. Manty, continuing) -- returns. Those**
 23 **refunds are property of the estate, do not spend**
 24 **them, turn them over to me.**
 25 A Okay.

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1 **Q And if you send the checks directly to me. If you**
 2 **spend them, you will lose your discharge.**
 3 A Okay.
 4 **Q So you don't want that to happen. So it's very**
 5 **important, and I caution people at all 341s not to**
 6 **do that, 'cause there's so many people that go out**
 7 **and spend them, and then they get their discharge**
 8 **revoked.**
 9 A Okay.
 10 **Q So don't do that. We'll also want to see your 2004**
 11 **returns, and the estate will have an interest in a**
 12 **prorata distribution for this year in those, as**
 13 **well. Do you think you're going to inherit any**
 14 **property in the next 180 days?**
 15 A No.
 16 MS. MANTY: Troy, do you have any
 17 questions?
 18 MR. EICHKOFF: Just a few.
 19 EXAMINATION
 20 BY MR. EICHKOFF:
 21 **Q Who is the friend that sold the '75 Corvette?**
 22 A Two friends from New Mexico that I think moved to
 23 Tennessee. And their names were Pat and -- hum. I
 24 -- I remembered them a few weeks ago, but I don't
 25 remember the other guy's name.

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1 **Q The full names are on the schedules?**
 2 MR. PILETICH: No.
 3 MS. MANTY: No. From what he can recall,
 4 they're just partial names.
 5 **Q (By Mr. Eichkoff, continuing) Where were you living**
 6 **before you lived in your current residence?**
 7 A I lived in Bayport, and then in Santa Fe, New
 8 Mexico.
 9 **Q Okay. What's your Bayport address?**
 10 A 423 South Fourth Street, 55003.
 11 **Q Okay. And who owns that property now?**
 12 A Eileen Hogberg.
 13 **Q Okay. Is that an ex-wife?**
 14 A Yes.
 15 **Q And do you have any possessions at that residence**
 16 **yet?**
 17 A Some clothes, and the Cadillac and the Volvo are
 18 sitting there, and the boat.
 19 **Q Okay. And when did you move into that residence?**
 20 A November of '03.
 21 **Q And you've been staying there since then?**
 22 A Yes. I stay at my parents', also.
 23 **Q And what is your parents' address?**
 24 A 211 North Seventh Street, Bayport.
 25 MR. EICHKOFF: That's it then.

