

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-34814-GFK

Michael Allen Norby
Kirsten May Norby
asf Elma Lanes, Inc.,

Debtor(s).

**NOTICE OF HEARING AND MOTION FOR OBJECTING
TO CLAIMED EXEMPTIONS**

TO: THE ABOVE NAMED DEBTOR(S), THEIR ATTORNEY PAUL W. BUCHER, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Charles W. Ries, the duly appointed and acting trustee in the above captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion on November 15, 2004 at 1:30 p.m., or as soon thereafter as counsel can be heard, before Honorable Gregory F. Kishel, Court Room No: 228b, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered not later than 1:30 p.m. on November 10, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than November 4, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). If no response is timely filed, the Court may in its discretion enter an order without a 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 or this motion is authorized under 28 U.S.C. 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This proceeding is a core proceeding. This Chapter 7 case was commenced on August 17, 2004. Charles W. Ries was appointed as Chapter 7 trustee on August 18, 2004. The first meeting of creditors was scheduled for September 17, 2004. This 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. Debtor(s) have scheduled certain assets as exempt on Schedule C, including as follows:

Hog Contract Payment Owing	MSA § 550.37 subd. 13	\$1,000
Checking Account – First State Bank	MSA § 550.37 subd. 13	\$141

Norby Farm Checking Account – First State Bank	MSA § 550.37 subd. 13	\$27
Flexible Premium Adjustable Life Insurance for Mrs. Norby, Policy # 011859651	MSA § 550.37 subd. 23	\$6,314
Whole Life Insurance for Mrs. Norby, Policy # 2002261	MSA § 550.37 subd. 13	\$1,840
Whole Life Insurance for Mrs. Norby, Policy # 2730824	MSA § 550.37 subd. 23	\$953
Whole Life Insurance Policy of daughter Ashley	MSA § 550.37 subd. 23	\$938
Whole Life Insurance Policy of son Nick	MSA § 550.37 subd. 23	\$3,546

7. Movant objects to the above noted exemptions claimed in that schedule as follows, for the following reasons:

- (a) The Debtor(s) have claimed Hog contract payment owing as exempt pursuant to MSA § 550.37 subd. 13. Objection is made because subd. 13 references definition of earnings not subject to § 571.922, limited to employee earnings and compensation for sale of agricultural products.
- (b) The Debtors have claimed Checking account and Norby Farm Checking account at First State Bank as exempt pursuant to MSA § 550.37 subd. 13. Objection is made because Trustee has not received verification that the balance in the accounts is traceable to wages.
- (c) The Debtors have claimed Flexible Premium Adjustable Life Insurance for Mrs. Norby, Policy # 011859651; Whole Life Insurance for Mrs. Norby, Policy # 2002261; and Whole Life Insurance for Mrs. Norby, Policy # 2730824 as exempt pursuant to MSA § 550.37 subd. 23. Objection is made because that statute allow on policy per debtor.
- (d) The Debtors have claimed Whole Life Insurance Policy of daughter Ashley and Whole Life Insurance Policy of son Nick as exempt pursuant to MSA § 550.37 subd. 23. Objection is made because the exemption is for a policy on the life of the debtor or an individual of whom the debtor is a dependant and the children do not fit into that category.

WHEREFORE, the Trustee requests that the Court deny the following exemptions claimed by the Debtor(s):

1. Hog Contract Payment Owing;
2. Checking Account – First State Bank ;
3. Norby Farm Checking Account – First State Bank;
4. Flexible Premium Adjustable Life Insurance for Mrs. Norby, Policy # 011859651;
5. Whole Life Insurance for Mrs. Norby, Policy # 2002261;
6. Whole Life Insurance for Mrs. Norby, Policy # 2730824;
7. Whole Life Insurance Policy of daughter Ashley; and
8. Whole Life Insurance Policy of son Nick.

Dated this 14th day of October, 2004.

/e/Charles W. Ries
Charles W. Ries for
MASCHKA RIEDY & RIES
Attorneys for Trustee
200 Union Square Business Center
201 North Broad Street
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries declares under penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Notice of Hearing and Motion Objecting to Claimed Exemptions and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries

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DECLARATION RE: SERVICE BY MAIL

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 14th day of October, 2004, she served the Notice of Hearing and Motion Objecting to Claimed Exemptions by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Michael Allen Norby
RR 1, Box 210
Leroy, MN 55951

Kirsten May Norby
RR 1, Box 210
Leroy, MN 55951

Paul W Bucher
DUNLAP & SEEGER, PA.
206 S Broadway #505
PO Box 549
Rochester, MN 55903-0549

United States Trustee
1015 U S Courthouse
300 S 4th St
Minneapolis MN 55415

/e/Janet Anderson_____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
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Kirsten May Norby
asf Elma Lanes, Inc.,

Case No: 04-34814-GFK

Debtor(s).

ORDER

At St. Paul, Minnesota this _____ day of _____, 2004.

The above captioned matter came before the Court on the on objection of the Chapter 7 Trustee to exemptions. Appearances were as noted upon the record.

Based upon the files, records, and proceedings herein,

IT IS HEREBY ORDERED,

That the Trustee's objection is sustained and

1. The claimed exemption of Hog Contract Payment Owing is denied.
2. The claimed exemption of Checking Account – First State Bank and Norby Farm Checking Account – First State Bank is denied.
3. The claimed exemption of Flexible Premium Adjustable Life Insurance for Mrs. Norby, Policy # 011859651; Whole Life Insurance for Mrs. Norby, Policy # 2002261; and Whole Life Insurance for Mrs. Norby, Policy # 2730824 is denied.
4. The claimed exemption of Whole Life Insurance Policy of daughter Ashley and Whole Life Insurance Policy of son Nick is denied.

BY THE COURT:

Honorable Gregory F. Kishel
United States Bankruptcy Judge