

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-50300

Wilmer S. Croft and
Doris E. Croft,

NOTICE OF MOTION AND MOTION
OBJECTING TO EXEMPT PROPERTY

Debtors.

TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTORS AND THEIR
ATTORNEY:

1. Dorraine A. Larison, Trustee of the bankruptcy estate of the above-named debtors, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2 p.m. on September 8, 2004, in Courtroom No. 2, at the United States Courthouse, at 515 West First Street, in Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 1, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than August 27, 2004, which is ten (10) 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, 11 U.S.C. § 522, Bankruptcy Rule 5005 and 9014, Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on March 18, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 522, and Bankruptcy Rule 4003 and Local Rule 4003-1(a). This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to

9001-6 and 9013-1 to 9013-5. Movant requests relief with respect to debtors' claims for exemption.

6. Debtors have claimed as exempt under 11 U.S.C. § 522(d)(5) the following assets which the trustee objects to as follows:

- a. Real property legally described as follows: All that part of Govt. Lot Two (2), Section thirteen (13), Township sixty-one (61) North, Range One (1) East lying west of the center of the bed of Devilstrack River, more particularly described as bounded on the west by the west line of said Govt. Lot 2, on the east and north by the Devilstrack River, and on the south by the north lines of the tracts heretofore conveyed to James Croft and Ann Croft as recorded in 12 Deeds 165, 12 Deeds 314, 14 Deeds 145 and to Frank P. Foster as recorded in 14 Deeds 373, and to Wilmer Croft as recorded in 17 Deeds 178, EXCEPT the Westerly 400.00 feet thereof. County of Cook, State of Minnesota;
- b. Cash on hand of debtors;
- c. Checking account at North Shore Credit Union;
- d. Savings accounts at North Shore Credit Union;
- e. Two portable Kenmore sewing machines and sewing machine table;
- f. Wearing apparel of the debtors;
- g. 10 horsepower Johnson motor;
- h. 14-foot aluminum boat (very old);
- i. Dump box for pickup truck; and
- j. Two garden tractors.

7. The trustee objects to the debtors' claims of exemption on the following basis: The debtors testified at the 341 meeting of creditors that the estimated market value for property tax purposes of the real property is \$27,700.00. The debtors amended Schedule A and C listing the value of the real property to now be \$4,000.00. The value of the real property is significantly

higher than claimed on the amended schedules; therefore, the debtors have claimed assets under 11 U.S.C. § 522(d)(5) that exceed the value allowed for exemption under this statute.

WHEREFORE, Applicant moves the court for an order sustaining trustee's objection to claimed exempt property and such other relief as may be just and equitable.

Dated this 20th day of July, 2004.

/e/ Dorraine A. Larison
Dorraine A. Larison
I.D. No. 203609
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
1010 West St. Germain
Suite 600
St. Cloud, MN 56301
(320) 252-4414
Attorneys for Trustee

VERIFICATION. I, Dorraine A. Larison, the movant declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: July 20, 2004

/e/ Dorraine A. Larison
Dorraine A. Larison, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-50300

Wilmer S. Croft and
Doris E. Croft,

UNSWORN CERTIFICATE OF SERVICE

Debtors.

I, Jean Eisenschenk, declare under penalty of perjury that on July 20, 2004, I mailed the following documents:

NOTICE OF MOTION AND MOTION OBJECTING TO EXEMPT PROPERTY AND 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 US COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

WILLIAM R SWEENEY
ATTORNEY AT LAW
416 N CENTRAL AVE
DULUTH MN 55807

WILMER S CROFT
1883 EAST HIGHWAY 61
GRAND MARAIS MN 55604-2117

DORIS E CROFT
1883 EAST HIGHWAY 61
GRAND MARAIS MN 55604-2117

Executed on: July 20, 2004

/e/ Jean Eisenschenk
Jean Eisenschenk
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
Suite 600
1010 West St. Germain Street
St. Cloud, MN 56301

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-50300

Wilmer S. Croft and
Doris E. Croft,

ORDER

Debtors.

At Duluth, Minnesota, _____, _____.

Upon the Objection to Claimed Exempt Property filed by the Trustee and upon all the files and records of the proceedings herein,

IT IS ORDERED:

1. The following items claimed exempt under 11 U.S.C. § 522(d)(5) are not exempt to the extent the value of said items exceeds \$19,300.00 as allowed under the statute for exemption:

- a. Real property legally described as follows: All that part of Govt. Lot Two (2), Section thirteen (13), Township sixty-one (61) North, Range One (1) East lying west of the center of the bed of Devilstrack River, more particularly described as bounded on the west by the west line of said Govt. Lot 2, on the east and north by the Devilstrack River, and on the south by the north lines of the tracts heretofore conveyed to James Croft and Ann Croft as recorded in 12 Deeds 165, 12 Deeds 314, 14 Deeds 145 and to Frank P. Foster as recorded in 14 Deeds 373, and to Wilmer Croft as recorded in 17 Deeds 178, EXCEPT the Westerly 400.00 feet thereof. County of Cook, State of Minnesota;
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- f. Wearing apparel of the debtors;

- g. 10 horsepower Johnson motor;
- h. 14-foot aluminum boat (very old);
- i. Dump box for pickup truck; and
- j. Two garden tractors.

Gregory F. Kishel
UNITED STATES BANKRUPTCY
JUDGE