

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Bky. No.: 04-50570 GFK

MARGARET M. HUGHES-HUSBANDS and
JAMES F. HUSBANDS,
Debtors.

**NOTICE OF MOTION AND VERIFIED MOTION OBJECTING
TO PROPERTY CLAIMED AS EXEMPT (AMENDED)**

TO: THE COURT, THE DEBTORS, THE DEBTORS' ATTORNEY DANIEL R. BINA, AND
THE UNITED STATES TRUSTEE

1. Robert R Kanuit, 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 2:00 p.m. on September 8, 2004, before the Honorable Gregory F. Kishel, in Courtroom 2 at the United States Courthouse, 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 29, 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, 11 U.S.C. § 542, Bankruptcy Rules 4003d, 9013 and 9014, and Local Rules 702 and 1201, et seq. This proceeding is a core proceeding. The petition commencing this Chapter 7

case was filed on May 13, 2004. The case is now pending in this Court. Movant is entitled to object to Debtors' claims of exemption pursuant to Bankruptcy Rule 4003.

5. This motion arises under 11 U.S.C. § 522, 11 U.S.C. § 542, and Bankruptcy Rule 4003 and Local Rule 702. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. Movant requests relief with respect to Debtors' nonexempt property.

6. Debtors have claimed various assets exempt under 11 U.S.C. § 522(d)(5), a retirement benefit as exempt under 11 U.S.C. § 522(d)(10)(E), and a homestead exempt under 11 U.S.C. §522(d)(1), which movant objects to.

7. Movant objects to debtors' claims of exemption for the following reasons:

- (A) As to the assets claimed exempt under 11 U.S.C. § 522(d)(5), the claimed exempt amount exceeds the allowed amount by \$6,353.00.
- (B) As to the retirement benefit, movant has requested information from the debtors to verify that this benefit is exempt but, to date, has not received the requested information.
- (C) As to the homestead, debtors claim the homestead is worth \$290,000.00. St. Louis County tax records indicate that the property is worth in excess of \$365,000.00, and movant has information that the property may be worth significantly more than that. At a value of \$365,000.00, the claimed exemption exceeds the allowed amount under 11 U.S.C. §522(d)(1).

WHEREFORE, trustee, Robert R. Kanuit, moves the Court for an order sustaining his objection to debtors' exemptions and such other relief as may be just and equitable.

Dated this 27th day of July, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit (#0252530)
Chapter 7 Trustee
4815 W. Arrowhead Road, #230
Hermantown, MN 55811
(218) 722-7722

VERIFICATION

I, Robert R. Kanuit, movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 27th day of July, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit

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UNSWORN DECLARATION FOR PROOF OF SERVICE

The undersigned, being an employee of Kanuit & Bray, Ltd., attorneys licensed to practice law in this Court, with office address of 4815 W. Arrowhead Road, Hermantown, MN 55811, declares under penalty of perjury that on the date stated below, she served the annexed **Notice of Motion and Verified Motion Objecting to Property Claimed as Exempt (Amended) and (proposed) Order** upon the persons/entities named below by mailing to them copies thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Hermantown, Minnesota, addressed as follows:

Margaret M. Hughes-Husbands and
James F. Husbands
4178 County Road 77
Tower, MN 55790-8132

Daniel R. Bina
Attorney at Law
Route 4, Box 205E
Pine City, MN 55063

U.S. Department of Justice
Office of the United States Trustee
U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

Ford Motor Credit Company
c/o Stewart, Zlimen & Jungers, Ltd.
430 Oak Grove Street, #200
Minneapolis, MN 55403

Dated this 27th day of July, 2004.

/e/ Bonnie K. Vanderpool
Bonnie K. Vanderpool

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ORDER

At Duluth, Minnesota, on September 8, 2004.

Upon the objection to property claimed as exempt filed by the trustee and upon all the files and records of the proceedings herein,

IT IS ORDERED:

The trustee's objections are sustained and the retirement benefit is not exempt and all property claimed exempt under 11 U.S.C. § 522(d)(5) is not exempt to the extent its aggregate value exceeds \$3,850.00, and debtors' homestead is not exempt to the extent debtors' equity in it exceeds \$36,900.00.

Honorable Gregory F. Kishel
United States Bankruptcy Judge