

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 04-50696

Peter M. Scanlan

Chapter 7 Case

Debtor.

RESPONSE TO OBJECTION TO CLAIMED EXEMPTION

Peter M. Scanlan (“Debtor”) submits this response to the Notice of Motion and Motion (“Motion”) filed on September 2, 2004, as amended by a filing on September 30, 2004, by Minnesota Laborers Fringe Benefits Funds (“Creditor” or “Funds”).

The hearing on the Motion and this Response may be held in Courtroom No. 2, in the United States Courthouse, 515 West First Street, Floor, U.S. Courthouse, Duluth , Minnesota on October 6, 2004 at 2:00 p.m.

For the reasons set forth herein and, the Debtor opposes the relief requested by the Creditor.

RESPONSE

The Debtor objects to the Motion on two grounds: (1) lack of service; and (2) untimeliness. The Debtor reserves the right to supplement this Response after the Debtor has had additional time to prepare and file a complete response.

Lack of Service

Counsel for the Debtor did not receive a copy of the Motion. Counsel for the Creditor did not file a proof of service with either the September 2 pleading or the September 30 pleading.

The undersigned Counsel for the Debtor learned of the filings by reviewing the Court's website in connection with another matter. On information and belief, service of the Motion on counsel for the Debtor was not made.

Due to lack of service and full notice, the Debtor and its counsel ask that this Court, at a minimum, excuse counsel for the Debtor from attending the October 6 hearing and not hold a hearing on the Motion until the Motion is served and full notice and opportunity to respond is afforded the Debtor and counsel for the Debtor, and ask this Court to order the Creditor to reschedule the hearing and give notice as required under the rules.

Untimeliness

The first scheduled date for the meeting of creditors pursuant to Section 341 of the Bankruptcy Code was August 2, 2004.

Pursuant to F.R.Bankr. P. 4003, the deadline for filing an objection to claimed exemptions is 30 days after the meeting of creditors held under Section 341(a) is concluded.

Upon information and belief, the meeting of creditors was concluded on August 2, 2004. Thirty days after August 2, 2004 is September 1, 2004.

The Motion was filed on September 2, 2004, and therefore is untimely.

WHEREFORE, the Debtor asks the Court for an order granting the following relief: (a) Excusing the Debtor and counsel for the Debtor from attending the October 6, 2004 hearing; (b) Denying the Motion; (c) Or, in the alternative, continuing the hearing on the Motion until after the Motion has been served in accordance with Bankruptcy Rules; and (d) Granting any other

relief the Court deems just and proper

HENSON & EFRON, P.A.

Dated: October 1, 2004

By /e/ Mary L. Cox
Mary L. Cox (#176552)
220 South Sixth Street, Suite 1800
Minneapolis, Minnesota 55402-4503
Telephone: 612-339-2500

Attorneys for Debtor

VERIFICATION

I, Mary L. Cox, attorney for the Debtor, hereby certify under penalty of perjury, that the statements contained in the foregoing response are true and correct to the best of my knowledge, information and belief and are either matters of the case record or matters of which I have personal knowledge.

Dated: October 1, 2004

/e/ Mary L. Cox

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Peter M. Scanlan,

Debtor.

PROOF OF SERVICE

The undersigned states that she is an employee of Henson & Efron, P.A., and in the course of said employment, on the date indicated below, she served the following:

Response to Objection to Claimed Exemption; and Proof of Service

on the entities named below and/or on the attached service by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail, unless otherwise noted; and that she certifies the foregoing under penalty of perjury.

United States Trustee
300 South Fourth Street
1015 U.S. Courthouse
Minneapolis, MN 55415
Fax: 612-664-5516

John A. Hedback, Esq.
Foster, Wentzell Hedback
2855 Anthony Ln S #201
Minneapolis, MN 55418-3265
Fax: 612-789-2109

MN Laborers Fringe Benefits Fund
c/o Pam Nissen
800 Nicollet Mall, Ste 2600
Minneapolis, MN 55402
Fax: 612-339-2386

Dated: October 1, 2004

/e/ Tawney Jameson