

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Bky. No. 04-50768 GFK

JOHN D. McINTOSH and  
CAROL Y. McINTOSH,

Debtors.

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**NOTICE OF MOTION AND MOTION OBJECTING  
TO PROPERTY CLAIMED AS EXEMPT**

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TO: THE COURT, THE DEBTORS, THE DEBTORS' ATTORNEY, 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 December 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 December 1, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than November 28, 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 July 2, 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 as exempt 10,000 shares in Pine Crest Homes, Inc., under 11 U.S.C. §522(d)(5), and a 2001 Alumacraft boat under 11 U.S.C. §522(d)(5), to which movant objects.

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

- (a) With regard to the shares of stock, debtors provided a balance sheet for Pine Crest Homes, Inc., as of July 31, 2004, which shows total equity in the corporation of \$474,158.21, debtors' one-third of which would be \$158,052.73, which equity position has a value well in excess of the amount allowed under 11 U.S.C. §522(d)(5).
- (b) With regard to the Alumacraft boat, considering all of the assets debtors have claimed exempt under 11 U.S.C. §522(d)(5), the amount claimed for this boat is in excess of the amount allowed. Also, debtors' exemption claim has been made in bad faith, as it was only made after the trustee determined that the "possessory lien" claimed to encumber the boat by debtors is invalid.

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 25th day of October, 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 25th day of October, 2004.

/e/ Robert R. Kanuit  
Robert R. Kanuit

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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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 **Motion Objecting to Property Claimed as Exempt and (proposed) Order** upon the persons named below by mailing to them a copy 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:

John and Carol McIntosh  
65606 Boundary Line Road  
Askov, MN 55704

Daniel R. Bina  
Attorney at Law  
1639 Main Street North  
Suite 1  
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

TCF Mortgage Corporation  
c/o McCalla, Raymer, et al.  
Bankruptcy Department  
1544 Old Alabama Road  
Roswell, GA 30076

Dated this 25<sup>th</sup> day of October, 2004.

/e/ Bonnie K. Vanderpool  
Bonnie K. Vanderpool

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**ORDER**

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At Duluth, Minnesota, on December 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 10,000 shares in Pine Crest Homes, Inc., and the 2001 Alumacraft boat are not exempt.

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The Honorable Gregory F. Kishel  
United States Bankruptcy Judge