

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-50868

Carol A. Juairé,

NOTICE OF MOTION AND MOTION
OBJECTING TO EXEMPT PROPERTY

Debtor.

TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTOR, AND HER ATTORNEY:

1. Dorraine A. Larison, Trustee of the bankruptcy estate of the above-named debtor, 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, 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 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 26, 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 July 30, 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 debtor's claims for exemption.

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

7. The trustee objects to the debtor's claim of exemption on the following basis: The debtor testified that her home was appraised at \$134,000.00 two years ago. As a result, the amount of equity in the debtor's home exceeds the amount that may be claimed exempt under 11 U.S.C. § 522(d)(1). Because the equity in the homestead is higher than claimed on the schedules, the amount available for exemption under 11 U.S.C. § 522(d)(5) is only \$975.00. The items claimed under 11 U.S.C. § 522(d)(5) exceed this amount.

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 27th day of October, 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: October 27, 2004

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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-50868

Carol A. Juairé,

UNSWORN CERTIFICATE OF SERVICE

Debtor.

I, Jean Eisenschenk, declare under penalty of perjury that on October 27, 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

CAROL A JUAIRE
3134 COUNTY RD 23
BRAINERD MN 56401

IAN TRAQUAIR BALL
ATTORNEY AT LAW
12 S SIXTH ST STE 326
MINNEAPOLIS MN 55402

Executed on: October 27, 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. 04-50868

Carol A. Juairé,

ORDER

Debtor.

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. All items claimed exempt by the debtor under 11 U.S.C. § 522(d)(5) are not exempt to the extent the value of the items exceeds \$975.00.
2. The debtor shall turn the items, or their value, claimed exempt under 11 U.S.C. § 522(d)(5) over to the Trustee.

Gregory F. Kishel
UNITED STATES BANKRUPTCY
JUDGE