

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

In Re: Bankruptcy No. 18-30365
Michael Lee Anderson, Chapter 7
Debtor.

_____ /

**ORDER CERTIFYING A QUESTION OF LAW TO THE
NORTH DAKOTA SUPREME COURT**

Pursuant to Rule 47 of the North Dakota Supreme Court Rules, the United States Bankruptcy Court for the District of North Dakota certifies the following question to the North Dakota Supreme Court:

To determine what part of a North Dakota debtor's jointly owned homestead is exempt, does the correct application of sections 28-22-02(7), 47-18-01 and 28-22-02(10) of the North Dakota Century Code permit the debtor to divide the equity in the homestead (full value less secured liens) equally with his nondebtor spouse and then apply the entire \$100,000 homestead exemption to the debtor's one-half equity interest (as opposed to subtracting the entire \$100,000 exemption from the equity in the property and then dividing the remaining equity between debtor and his or her nondebtor spouse)?

Statement of Facts Relevant to the Question:

Debtor Michael Lee Anderson petitioned for bankruptcy relief on June 19, 2018. On the same day, he filed a schedule of exempt assets, claiming an \$81,600 exemption in the following described real property under sections 28-22-02(7), 47-

18-01 and 28-22-02(10) of the North Dakota Century Code:

Lot 10, Block 2 of Meidinger Second Addition to the City of Jamestown, County of Stutsman, State of North Dakota. The street address of this property is 1626 16th Street Southwest, Jamestown, North Dakota.

Doc. 17. Debtor and his nondebtor spouse reside at the real property described above and claim it as their homestead. Doc. 17. They own the property as joint tenants. Doc. 17.

On September 13, 2018, the Bankruptcy Trustee filed an objection to the homestead exemption Debtor claimed. He asserts that Debtor improperly deducted the \$100,000 homestead exemption from Debtor's one-half interest in the property. He argues that Debtor must deduct the \$100,000 homestead exemption from the full value of the property less secured liens, resulting in \$63,200 in equity. The Trustee claims: "Half that amount, or \$31,600, would remain as property of the debtor's wife and the balance would be nonexempt property of the bankruptcy estate." Debtor filed a response arguing that his \$81,600 homestead exemption claim is proper.

The Bankruptcy Trustee and Debtor agree that the value of the real property is \$167,200. Doc. 17. The parties also agree that the real property is subject to USDA Rural Development's secured claim totaling \$4,000. Doc. 17.

Statement of No Controlling Precedent:

The question presented to the Bankruptcy Court is: Over the Bankruptcy Trustee's objection, may Debtor, a North Dakota resident who owns real property in

joint tenancy with his nondebtor spouse, exempt \$81,600 in equity under sections 28-22-02(7), 47-18-01 and 28-22-02(10) of the North Dakota Century Code when the value of the property less secured claims totals \$163,200?

Section 541(a)(1) of the Bankruptcy Code provides that, at the commencement of a case, the bankruptcy estate includes “all legal or equitable interests of the debtor in property.” 11 U.S.C. § 541(a)(1). The Code allows debtors to exempt certain property from the bankruptcy estate. 11 U.S.C. § 522(b)(1). “Exempt property is excluded from property of the estate available to satisfy debts.” Benn v. Cole (In re Benn), 491 F.3d 811, 813 (8th Cir. 2007). Section 522(b)(2) authorizes states to opt out of the federal scheme of property exemptions enumerated in section 522(d). Exercising this grant of authority, North Dakota enacted property exemptions for purposes of bankruptcy, limiting its residents to claiming the state exemptions rather than the federal exemptions. See N.D.C.C. § 28-22-17. Accordingly, Debtor claimed North Dakota statutory exemptions, and the Bankruptcy Court looks to North Dakota law in interpreting these exemptions.

Sections 28-22-02(7), 47-18-01 and 28-22-02(10) do not directly address the certified question. The parties cited no controlling precedent, and the Bankruptcy Court found none.

IT IS ORDERED that the question presented above shall be certified to the North Dakota Supreme Court. The Bankruptcy Clerk shall forward this question to the Clerk of the North Dakota Supreme Court. A copy of the Stipulation [Doc. 17] shall be provided with this Order.

Dated: November 26, 2018.

A handwritten signature in black ink that reads "Shon Hastings". The signature is written in a cursive, flowing style.

Shon Hastings, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

In re:)
) Bky. Case No. 18-30365
) Chapter 7
)
Michael Lee Anderson,)
) **STIPULATION**
)
Debtor.)
)
_____)

Kip M. Kaler, the bankruptcy trustee, enters into this Stipulation with the debtor, Michael Lee Anderson, by and through his attorney. The trustee filed an objection to the debtor's homestead exemption on September 13, 2018. The debtor filed his response to the objection on September 27, 2018. The Court entered a Notice of Hearing on October 2, 2018, scheduling this matter for hearing on Thursday, November 8, 2018 at 2:00 p.m. The Court's Notice of Hearing ordered the parties to disclose witness lists and exhibits not later than two business days before the hearing on this matter. The parties believe that in light of the undisputed facts, this dispute presents a question of law only. Therefore, the parties agree to stipulate to the following facts:

1. The debtor filed his Chapter 7 bankruptcy petition on June 19, 2018.
2. The debtor and his spouse reside at real property located at 1626 16th Street SW,

Jamestown, North Dakota legally described as:

**Lot 10, Block 2 of Meidinger Second Addition to the City of Jamestown,
County of Stutsman, State of North Dakota.**

3. The debtor and his spouse occupy that real estate as their homestead, as joint tenants.
4. The debtor schedules the real property as having a value of \$167,200 on the debtor's filed Schedule A/B. The trustee and debtor agree that the real property has a value in excess of the homestead exemption and the secured debt on the property.

5. The debtor schedules property as subject to a secured claim of \$4,000 held by USDA Rural Development.

6. In light of the factual bases stipulated to by the parties, neither party intends to call witnesses or enter any exhibits into the record.

Dated: 11/06/2018

/s/ Patrick J. Sinner
Kip M. Kaler (#03757)
Patrick J. Sinner (#08345)
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Dated: 11/06/2018

/s/ Sara E. Diaz
Sara E. Diaz (#06069)
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MEANSNO

**U.S. Bankruptcy Court
District of North Dakota (Fargo)
Bankruptcy Petition #: 18-30365
Internal Use Only**

Assigned to: Judge Shon Hastings
Chapter 7
Voluntary
No asset

Date filed: 06/19/2018
Debtor discharged: 10/17/2018
341 meeting: 08/17/2018
Deadline for objecting to discharge: 10/16/2018
Deadline for financial mgmt. course: 10/16/2018

Debtor disposition: Standard Discharge

Debtor

Michael Lee Anderson
1626 16th Street SW
Jamestown, ND 58401
STUTSMAN-ND
SSN / ITIN: 501-84-1004

represented by **Sara Diaz**

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Trustee

Kip M. Kaler
Bankruptcy Trustee
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represented by **KIP M. KALER**

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U.S. Trustee

Robert B. Raschke
Assistant U.S. Trustee

Suite 1015 U.S. Courthouse
 300 South Fourth Street
 Minneapolis, MN 55415
 612-334-1350

Filing Date	#	Docket Text
06/19/2018	1	Chapter 7 Voluntary Petition for Individuals . Fee Amount \$335 Filed by Sara Diaz on behalf of Michael Lee Anderson. (Diaz, Sara) (Entered: 06/19/2018)
06/19/2018	2	Certificate of Credit Counseling Filed by Debtor Michael Lee Anderson. (Diaz, Sara) (Entered: 06/19/2018)
06/19/2018		Receipt of Voluntary Petition (Chapter 7)(18-30365) [misc,volp7] (335.00) Filing Fee. Receipt number 1116027. Fee amount 335.00. (U.S. Treasury) (Entered: 06/19/2018)
06/19/2018	3	Statement Under Penalty of Perjury Concerning Payment Advices Filed by Debtor Michael Lee Anderson. (Diaz, Sara) (Entered: 06/19/2018)
06/19/2018	4	Meeting of Creditors with 341(a) meeting to be held on 08/17/2018 at 09:00 AM at U.S. Post Office, Room 319, 657 2nd Avenue North, Fargo, ND 58102. Objections for Discharge due by 10/16/2018. (Diaz, Sara) (Entered: 06/19/2018)
06/20/2018	5	Clerk's Evidence of Repeat Filings for debtor Michael Lee Anderson Case Number 93-30947 , Chapter 7 filed in North Dakota Bankruptcy Court on 11/08/1993 , Standard Discharge on 02/02/1994; Case Number 06-30386 , Chapter 7 filed in North Dakota Bankruptcy Court on 08/16/2006 , Standard Discharge on 12/06/2006. (Admin) (Entered: 06/20/2018)
06/22/2018	5	BNC Certificate of Mailing - Meeting of Creditors. (RE: related document(s) 4 Meeting (Chapter 7)) No. of Notices: 3. Notice Date 06/22/2018. (Admin.) (Entered: 06/22/2018)
08/03/2018	6	Application to Employ Kaler Doeling PLLP as Attorneys Including: Notice of Motion served on 8/3/2018 and Certificate of Service Filed by Trustee Kip M. Kaler Last day to object is 08/17/2018. (Kaler, Kip) (Entered: 08/03/2018)
08/20/2018	7	Trustee's Initial Report & First Meeting Held (Kaler, Kip) (Entered: 08/20/2018)
08/20/2018	8	Order Approving Application to Employ Kip M. Kaler and Kaler Doeling PLLP as attorneys for trustee effective August 3, 2018 (Related Doc 6). The application to employ is APPROVED subject to the limitations on compensation provided by 11 U.S.C. § 328. This order is not a determination that the services or rates charged are necessary and reasonable. The person or entity employed under this order shall file a fee application in accordance with the Bankruptcy Code and Federal Rules of Bankruptcy Procedures. See Fed. R. Bank. P. 2016, 2017 and 11 U.S.C. 329, 330. Applicant must also comply with Local Rules. As required by applicable federal rule or statute, the Movant shall serve this docket text only order on all appropriate parties that will not receive notice of electronic filing. By Judge Shon Hastings. (Text order only) Signed on 8/20/2018 (vck, Court) (Entered: 08/20/2018)

08/20/2018	9	Notice of Requirement to File Financial Management Course Certificate (admin) (Entered: 08/20/2018)
08/23/2018	10	BNC Certificate of Mailing. (RE: related document(s) 9 Notice of Requirement to File Financial Management Course Certificate) No. of Notices: 1. Notice Date 08/23/2018. (Admin.) (Entered: 08/23/2018)
08/27/2018	11	Personal Financial Management Course Certificate For Debtor Michael Anderson Provided by Allen Credit, 888-415-8173. (Entered: 08/27/2018)
09/13/2018	12	Objection to Homestead Exemption Including: Notice of Objection served on 9/13/2018 and Certificate of Service Filed by Trustee Kip M. Kaler. Objections due by 09/27/2018. (KALER, KIP) (Entered: 09/13/2018)
09/27/2018	13	Response to (related document(s): 12 Objection to Homestead Exemption filed by Trustee Kip M. Kaler) Filed by Debtor Michael Lee Anderson (Attachments: # 1 eXHIBIT a) (Sorensen, Alan) (Entered: 09/27/2018)
10/02/2018	14	Notice of Hearing (Related Doc # 12 Objection to Debtor's Homestead Exemption filed by Trustee Kaler). Hearing to be held on 11/8/2018 at 02:00 PM Quentin N. Burdick U.S. Courthouse, Courtroom #3, 2nd Floor, 655 1st Ave. N., Fargo, ND 58102. (sfh, Court) (Entered: 10/02/2018)
10/17/2018	15	Order Discharging Debtor (Admin.) (Entered: 10/17/2018)
10/20/2018	16	BNC Certificate of Mailing. (RE: related document(s) 15 Order Discharging Debtor - CH 7) No. of Notices: 3. Notice Date 10/20/2018. (Admin.) (Entered: 10/20/2018)
11/06/2018	17	Stipulation By and Between Kip M. Kaler <i>and Debotr through his attorney Sara E. Diaz</i> Filed by Trustee Kip M. Kaler (related document(s) 12 Objection to Homestead Exemption, 13 Response). (Sinner, Patrick) (Entered: 11/06/2018)
11/08/2018	18	Hearing Held (RE: 12 Objection to Homestead Exemption filed by Trustee Kip M. Kaler). APPEARANCES BY: Attorney Patrick Sinner for Trustee Kip Kaler; Attorney Sara Diaz for Debtor. DISPOSITION: Objection by Trustee Kaler to Debtor's Homestead Exemption is held in abeyance. Parties are granted until November 15, 2018 to provide feed back on question the Court intends to certify to the North Dakota Supreme Court. TIME OF HEARING: 1:56 to 1:58 p.m. and 2:24 to 2:42 p.m. (sfh, Court) (Entered: 11/08/2018)
11/26/2018	19	Order Certifying a Question of Law to the North Dakota Supreme Court (RE: 12 Objection to Homestead Exemption filed by Trustee Kip M. Kaler). Signed on 11/26/2018. (sfh, Court) (Entered: 11/26/2018)