

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
ROOM 211  
FEDERAL BUILDING AND U.S. POST OFFICE  
225 SOUTH PIERRE STREET  
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT  
BANKRUPTCY JUDGE

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May 5, 1995

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Chapter 7 Trustee  
Post Office Box J  
Sioux Falls, South Dakota 57101

Subject: ***In re Harvey G. and Adeline L. Fridrich,***  
Chapter 7; Bankr. No. 94-40247

Dear Counsel and Trustee:

The matter before the Court is the Trustee's objection to Debtors' claim that a certain lease payment is exempt. This is a core matter under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute findings and conclusions under F.R.Bankr.P. 7052. Based on applicable law, the Court finds that the rent proceeds were property of the estate on the petition date and that Debtors may declare the rent proceeds exempt.

The facts are not in dispute. Before Debtors filed their Chapter 7 petition on May 9, 1994, they orally leased some real property to Bernie Kostal. According to the lease terms, the first half of the rent was due March 1, 1994. Mr. Kostal did not make the first payment timely. Instead, on May 9, 1994, he made a rent check payable to his attorney. The attorney deposited the funds into his trust account on May 13, 1994.

Debtors claimed the funds exempt under S.D.C.L. § 43-45-4. Trustee Yarnall objected on the grounds that the rent proceeds were not property of the estate on the petition date and, therefore, may not be claimed exempt.

The rent payment was estate property. On May 9, 1994, when the petition was filed, the rent due was an account receivable. As a legal interest of the debtor on the petition date, the funds became estate property under 11 U.S.C. § 541(a)(1). Mr. Kostal's deposit of the funds with his attorney did not alter the nature of

Re: Harvey G. And Adeline L. Fridrich  
May 5, 1995  
Page 2

the receivable as estate property. Instead, Mr. Kostal's attorney should now turnover the funds to Trustee Yarnall and file an accounting pursuant to 11 U.S.C. § 543(b).

Once the funds are recovered by the Trustee, Debtors may then declare the property exempt under 11 U.S.C. § 522(g) if Debtors have not maximized their exemptions under S.D.C.L. § 43-45-4.

The parties shall submit an agreed proposed order within ten days of the entry of this letter decision.

Sincerely,

Irvin N. Hoyt  
Chief Bankruptcy Judge

INH:sh

CC: Bankruptcy Clerk  
United States Trustee