

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division**

IN RE:

Case No. 04-34338-BKC-SHF
Chapter 7 Proceeding

ANDREW J. GAUTHIER,
TERRI L. GAUTHIER a/k/a
TERRI L. NADEL,

Debtors. _____/

PATRICIA DZIKOWSKI, TRUSTEE

Adv. Pro. No. 06-1113-BKC-SHF-A

Plaintiff,

vs.

ANDREW J. GAUTHIER,
TERRI L. GAUTHIER; FRANK SCHIAVO,
SCOTT MCQUADE, MICHAEL NADEL,
BARRY EISEN, HENRY GAUTHIER,
JERALDINE STEINMANN; AND
CRARY, BUCHANAN, BOWDISH, BOVIE
BERES, ELDER, THOMAS, CHARTERED,

Defendants. _____/

*******SUMMARY OF MEMORANDUM OPINION*******

Order entered on May 30, 2007

The debtors, Andrew J. Gauthier and Terri L. Gauthier, filed a voluntary chapter 7 petition on September 15, 2004. The debtors, in Schedule A. of their bankruptcy schedules, claim a homestead exemption, pursuant to Article X, Section 4 of the Florida Constitution, in real property located at 2950 SE Dalhart Road, Port St. Lucie, Florida. The debtors amended their schedules on January 6, 2005 to reflect that they did not own any real property, but instead owed an interest in a financial account at Washington Mutual Bank, Account No. 489-359442-8, with a balance of \$87,697.28, ostensibly representing the exempt proceeds from the sale of the Dalhart Road property.

The debtors testified that on September 1, 2004, and prior to the filing of their chapter 7 petition, the debtors sold their ownership interest in the Dalhart Road property. The debtors received net proceeds from the closing in the amount of \$90,990.32. On September 6, 2005, this Court entered its Agreed Order Extending the Time for the Trustee to Object to the Debtors' Discharge and to Object to the Debtors' Claim of Exempt Property and Directing Turnover of Sales Proceeds ("Turnover Order" - C. P. 42), whereby the debtors were directed to turnover the net proceeds derived from the sale of the Dalhart Road property or to provide an accounting of any expended sale proceeds. To date, the debtors have failed to turn over any proceeds to the trustee. At trial, the debtors acknowledged that all of the net proceeds had been expended on miscellaneous living expenses.

Held:The Court, having considered the testimony of the witnesses, the documentary evidence presented by the parties, the candor and demeanor of the witnesses, the underlying pleadings, and being otherwise fully advised in the premises, **sustains** the trustee's objection to the debtor's claimed homestead exemption, **denies** the debtors' discharge pursuant to 11 U.S.C. §§ 727 (a)(2) and (a)(4), **avoids** a post-petition transfer from the debtors to Crary, Buchanan, Bowdish, Bovie, Beres, Elder & Thomas, Chartered in the amount of **\$5,000** and enters a money judgment against the debtors in the amount of **\$90,990.32**.