

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Tammy Diane Story

**Bankruptcy No. 03-46203
Chapter 7 Case**

Debtor.

***NOTICE OF HEARING AND MOTION FOR DISMISSAL
OF BANKRUPTCY PROCEEDINGS***

TO: Debtor; Debtor's Attorney; United States Trustee; and All Other Parties in Interest.

1. Timothy D. Moratzka ("Trustee"), by and through his undersigned attorneys, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 1:00 p.m. on Wednesday, February 18, 2004, in Courtroom No. 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than Thursday, February 12, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than Friday, February 6, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE IS TIMELY FILED AND SERVED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion, or this motion is authorized under 28 U.S.C. Sec. 157, Bankruptcy Rule 5005 and Local Rule 1070-1. This motion is filed under 11

U.S.C. Sec. 305, 1017(d) and 9014, and Local Rule 1017-2(a) and Trustee requests dismissal of the bankruptcy proceedings filed by Debtor.

5. The petition commencing the Chapter 7 case was filed on September 2, 2003.

This proceeding is a core proceeding. This case is now pending in this Court.

6. The first meeting of creditors was scheduled for October 3, 2003. Debtor failed to appear at the first meeting of creditors.

7. According to Debtor's attorney, Debtor purposely did not attend the §341 hearing on October 3, 2003 and will not return calls to her attorney's office.

8. The discharge of Debtor was scheduled to be entered on December 2, 2003. An Order to defer discharge was entered on November 12, 2003.

WHEREFORE, Trustee moves the Court for an order dismissing the Chapter 7 proceedings of Debtor, vacating any discharge, if granted.

Dated: January 6, 2004

Respectfully submitted,

MACKALL, CROUNSE & MOORE, PLC

By /e/Timothy D. Moratzka
Timothy D. Moratzka (#75036)
Patrick Summers (#028841X)
Attorneys for Trustee
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, Minnesota 55402
(612) 305-1400

VERIFICATION

Timothy D. Moratzka declares under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: January 6, 2004.

Signed: /e/Timothy D. Moratzka
Timothy D. Moratzka

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

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**Bankruptcy No. 03-46203
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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

Timothy D. Moratzka ("Trustee") submits this memorandum in support of his motion to dismiss this Chapter 7 case.

FACTS

The first meeting of creditors was scheduled for October 3, 2003. Debtor failed to appear at the first meeting of creditors.

According to Debtor's attorney, Debtor purposely did not attend the §341 hearing on October 3, 2003 and will not return calls to her attorney's office.

ARGUMENT

This motion is brought under the authority contained in Local Rules 1017-2(a) and 7041-1 and Federal Rules of Bankruptcy Procedure 1017 and 9014 with due notice having been given.

A meeting of creditors is to be convened by Trustee. 11 U.S.C. § 341(a). Debtor has the duty of submitting to an examination under oath at the meeting of creditors under Section 341(a). 11 U.S.C. § 343. Debtor has failed to fulfill this duty by the uncontroverted evidence before the

Court.

Trustee may request the dismissal of the case for cause, including an unreasonable delay by Debtor that is prejudicial to creditors. 11 U.S.C. § 701(a)(1). Debtor's failure to appear at the first meeting of creditors is an unreasonable delay. Moreover, creditors are prejudiced by not being able to examine Debtor under oath. Consequently, dismissal of this case is appropriate.

Moreover, if any discharge has been entered prior to the hearing on the Motion, such discharge should be vacated pursuant to 11 U.S.C. § 727.

CONCLUSION

For all the reasons set forth herein, Trustee respectfully respects the Court to dismiss this case and vacate any discharge granted.

DATED: January 6, 2004.

Respectfully submitted,

MACKALL, CROUNSE & MOORE, PLC

By /e/Timothy D. Moratzka
Timothy D. Moratzka (#75036)
Patrick C. Summers (#028841X)
Attorneys for Trustee
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, Minnesota 55402
(612) 305-1400

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

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UNSWORN DECLARATION OF TIMOTHY D. MORATZKA

Timothy D. Moratzka, being duly sworn, hereby states as follows:

1. I am the duly appointed trustee in the above captioned proceeding.

The first meeting of creditors was scheduled for October 3, 2003. Debtor failed to appear at the first meeting of creditors.

2. According to Debtor's attorney, Debtor purposely did not attend the §341 hearing on October 3, 2003 and will not return calls to her attorney's office.

3. The meeting of creditors has not been concluded.

4. The discharge of Debtor was to be entered December 2, 2003. An Order to defer discharge was entered on November 12, 2003.

5. Your affiant requests that the discharge of the Debtor not be entered until after the hearing on the Trustee's Notice of Motion and Motion for Dismissal of Bankruptcy Proceedings

FURTHER YOUR AFFIANT SAITH NOT.

Dated: January 6, 2004.

/e/Timothy D. Moratzka
Timothy D. Moratzka, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Tammy Diane Story

**Bankruptcy No. 03-46203
Chapter 7 Case**

Debtor.

NOTICE OF HEARING ON MOTION TO DISMISS CASE

TO: All creditors and other parties in interest.

Timothy D. Moratzka, Trustee herein has filed a motion, to dismiss this case.

On Wednesday, February 18, 2004, at 1:00 p.m. in Courtroom No. 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, the Court will hold a hearing to determine whether this case should be dismissed.

Any response to this motion must be filed and delivered not later than Thursday, February 12, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than Friday, February 6, 2004 which is seven days before the time set for the hearing, (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE IS TIMELY FILED AND SERVED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

Dated: _____

Clerk of Bankruptcy Court

By _____
Deputy Clerk

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Tammy Diane Story

Debtor.

Bky. Case No. 03-46203
Chapter 7

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Cheryl DeBettignies, employed by Mackall, Crounse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion for Dismissal of Bankruptcy Proceedings, Memorandum in Support, Affidavit of Timothy D. Moratzka, and proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

Tammy Diane Story
5113 Dupont Avenue North
Minneapolis, MN 55430

U.S. Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: 1/8/04
CLD/cld#687757v1

By /e/ Cheryl DeBettignies

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Tammy Diane Story

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ORDER

The above-entitled matter came on for hearing on February 18, 2003, pursuant to a Notice of Hearing on Motion to Dismiss Case filed by Timothy D. Moratzka, Trustee. Appearances were noted in the Court's record.

Based upon the files, records and proceedings herein,

IT IS HEREBY ORDERED,

1. The above captioned bankruptcy proceeding is hereby dismissed pursuant to 11 U.S.C. §707.
2. The discharge, if any, of Debtor is hereby vacated pursuant to 11 U.S.C. §727; and Clerk is directed to appropriately notice all creditors and interested parties.

Dated: _____

Nancy C. Dreher
United States Bankruptcy Judge