

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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IN RE:

BKY. NO. 03-47881

PAUL BRIAN MORTENSEN AND  
ANGELA CHRISTINE MORTENSEN,

DEBTOR(S).

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MBNA AMERICA BANK, N.A.,

ADV. NO. 04-4062

PLAINTIFF(S),

V.

**ANSWER**

PAUL BRIAN MORTENSEN AND  
ANGELA CHRISTINE MORTENSEN,

DEFENDANT(S).

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COMES NOW, Paul Brian Mortensen and Angela Christine Mortensen, and as for their Answer to Plaintiff's Complaint, state, allege and represent to the Court as follows:

I.

Defendants deny all of the allegations contained in Plaintiff's Complaint except as hereinafter specifically admitted, explained, qualified or otherwise answered.

II.

Defendants specifically deny all of the allegations of conversion, misrepresentation, fraud, implied promises, implied intentions and implied representations as alleged in Plaintiff's Complaint or otherwise.

III.

Defendants admit the allegations contained in paragraphs one (1) and two (2) of

Plaintiff's Complaint.

IV.

Defendants are without information sufficient to either admit or deny the allegations contained in paragraphs three (3), four (4) and five (5) and nine (9) of Plaintiff's Complaint and, therefore, deny the same and put Plaintiff to its strict burden of proof as to said allegations.

V.

Defendants deny the allegations contained in paragraphs six (6), seven (7) and eight (8) of Plaintiff's Complaint and puts Plaintiff to its strict burden of proof as to said allegations.

VI.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred by the various financial risks that Plaintiff assumed in issuing credit cards to various individuals, including the Defendants.

**THIRD AFFIRMATIVE DEFENSE**

Defendants hereby reserve all other defenses that may be applicable and available to them under Bankruptcy Rules 7008 and 7012.

WHEREFORE, Defendants respectfully request the Court to dismiss Plaintiff's Complaint in its entirety, to order the debt to Plaintiff as being discharged, to make a finding that Plaintiff's position is not substantially justified per 11 U.S.C. § 523(d) and given the extant case law in the District of Minnesota and to award them their costs and reasonable attorneys fees as

against Plaintiff per 11 U.S.C. § 523(d).

Dated: this 8<sup>TH</sup> day of April, 2004.

**ESKENS, GIBSON & BEHM, CHTD.**

/s/ Stephen J. Behm  
Stephen J. Behm, #263758  
3 Civic Center Plaza, Suite 409  
P.O. Box 1056  
Mankato, MN 56002-1056  
(507) 345-5500

**COUNTER-CLAIM**

Defendants, for their Counter-Claim against Plaintiff, respectfully state, allege and affirm to the Court as follows:

1. Plaintiff's claim is not substantially justified as per 11 U.S.C. § 523(d);
2. Defendants are entitled to their attorneys fees, costs and disbursements as against Plaintiff.

WHEREFORE, Defendants pray for an order granting relief as requested in said Counter-Claim.

Dated: this 8<sup>TH</sup> day of April, 2004.

**ESKENS, GIBSON & BEHM, CHTD.**

/s/ Stephen J. Behm  
Stephen J. Behm, #263758  
115 East Hickory Street, Suite 200  
P.O. Box 1056  
Mankato, MN 56002-1056  
(507) 345-5500

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**AFFIDAVIT OF SERVICE  
BY MAIL**

PAUL BRIAN MORTENSEN AND  
ANGELA CHRISTINE MORTENSEN,

DEFENDANT(S).

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I, Stephen J. Behm, attorney with Eskens, Gibson & Behm Law Firm, Chtd., 115 East Hickory Street, Suite 200, P.O. Box 1056, Mankato, MN 56002-1056, declare under penalty of perjury that on April 8, 2004, I mailed copies of the attached **Answer and Counter Claim** by first class mail postage prepaid to each entity named below at the addresses stated below for each entity.

David Jon Hoiland, Attorney at Law, 120 South Sixth Street, Suite 1100, Minneapolis, MN 55402.

Paul and Angela Mortensen, 700 Harbor Lane, Plymouth, MN 55447.

  
\_\_\_\_\_  
Stephen J. Behm

Subscribed to and sworn before me  
this 8<sup>th</sup> day of April, 2004.

  
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Notary Public

