

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

Michael R. Russell and Kimberly A.
Russell,

Bky No. 02-41020

Debtors.

Terri A. Georgen, Trustee,

Adv. No. 04-4105

Plaintiff,

v.

**ANSWER OF KIMBERLY
A. RUSSELL TO AMENDED
COMPLAINT**

Kimberly A. Russell,

Defendant.

Kimberly A. Russell ("Russell"), for her Answer to the Amended Complaint of Plaintiff, Terri A. Georgen, as Trustee (the "Trustee") in the bankruptcy case of Michael R. Russell and Kimberly A. Russell, by her undersigned attorney, states and alleges as follows:

Unless otherwise admitted or responded to herein, Russell denies each and every allegation of the adversary complaint (the "Complaint").

1. Russell admits the allegations in paragraph 1.
2. Russell admits that this bankruptcy case was commenced on March 19, 2002 but denies that she filed a Chapter 7 petition. This bankruptcy case was commenced by filing a Chapter 13 petition.
3. Russell admits the allegation in paragraph 3.

4. Russell admits this court has jurisdiction over this case but denies all other allegations in paragraph 4.

5. Russell admits the allegation in paragraph 5.

6. Russell admits the allegations in paragraph 6.

7. Russell admits the allegation in paragraph 7 and affirmatively states that she executed the Notice of Voluntary Conversion on June 3, 2002.

8. Russell admits the allegations in paragraph 8.

9. Russell admits that the Structured Settlement will be paid by an annuity with group annuity contract number GA001, that Exhibit D contains a true and correct copy of the Group Annuity Certificate, that the annuitant is Kimberly A. Sullivan n/k/a Kimberly A. Russell, and that the Structured Settlement resulted from the settlement of a personal injury action. Russell denies the allegation contained in the third sentence. Russell affirmatively asserts that the group annuity contract number GA001 was issued to and is owned by American Family Mutual Ins. Co. and, as the annuitant, Russell has a right to receive the payments from the annuity.

10. Russell denies the allegations in paragraph 10.

11. Russell denies the allegations in paragraph 11.

12. As to Paragraph 12, Russell admits that the Plaintiff seeks a determination that the Annuity and/or rights to the payment from the Annuity became property of the estate at the commencement of the bankruptcy case. Russell denies that that the Annuity and/or rights to the payment from the Annuity became property of the estate at the commencement of the bankruptcy case and denies that it remains property of the estate.

13. As to Paragraph 13, Russell admits that the Plaintiff seeks an order from the court requiring Russell to turnover to the Trustee the Annuity and/or rights to the payment from the Annuity and declaring that the Trustee is the owner of the Annuity and/or rights to the payment from the Annuity. Russell denies that the Trustee is the owner of the Annuity and/or rights to the payment from the Annuity and denies that the Trustee is entitled to recover the Annuity and/or rights to the payment from the Annuity.

14. As to Paragraph 14, Russell restates and realleges its answers to Paragraphs 1 through 13 above.

15. Russell denies the allegations in Paragraph 15 and affirmatively states that the Structured Settlement annuity is effectively exempt pursuant to Minn. Stat. § 549.31 because it contains an anti-alienation clause enforceable against third parties pursuant to Minn. Stat. § 549.31 and is therefore unavailable for distribution to creditors and is not property of the bankruptcy estate.

16. Russell admits that the Plaintiff, as a trustee, possesses the rights set forth in 11 U.S.C. § 544, but Russell denies that the trustee may recover Annuity and/or rights to the payment from the Annuity pursuant to 11 U.S.C. § 544.

17. Russell denies the allegations in Paragraph 17.

Affirmative Defenses

1. The Structured Settlement annuity and/or rights to the payment from the Structured Settlement annuity are not property of the bankruptcy estate because the Structured Settlement annuity contains an anti-alienation clause enforceable against third parties pursuant to Minn. Stat. § 549.31 and is therefore unavailable for distribution to creditors and is not property of the bankruptcy estate.

2. The Trustee's ability to transfer the structured settlement annuity payments is limited by Minn. Stat. § 549.31.

3. Pursuant to Minn. Stat. § 549.31, structured settlement annuity payments are not part of the bankruptcy estate because, *inter alia*, a trustee can never establish the statutory requirements to obtain the required court order to allow transfer of the payments (i.e., that the transfer of structured settlement annuity payments made in order to pay creditors would be "in the best interest" of the debtor and the debtor's dependents).

4. Plaintiff failed to commence this action within the time limits proscribed by 11 U.S.C. § 546.

WHEREFORE, Defendant Kimberly R. Russell prays that the Trustee take nothing and award such other relief as the Court deems just and equitable.

Dated: October 6, 2004

MOSS & BARNETT, P.A.

By: /e/ Lorie A. Klein

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Attorneys for Defendant Kimberly A. Russell

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UNSWORN CERTIFICATE OF SERVICE

Kimberly A. Russell,

Defendant.

I, Lorie Klein, of the law firm of Moss & Barnett, City of Minneapolis, County of Hennepin, State of Minnesota, declare under the penalty of perjury that on October 6, 2004, I served copies of the attached Answer of Kimberly Russell and this certificate of service by facsimile, as directed, to each entity named below at the facsimile number or address stated below for each entity:

FACSIMILE AND U.S. MAIL
Randall L. Seaver, Esq.
Fuller, Seaver & Ramette, P.A.
12400 Portland Avenue South, Suite 132
Burnsville, Minnesota 55337-2572
Facsimile: 952-890-0244

Executed on: October 6, 2004

Signed: /e/ Lorie Klein

Lorie Klein
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90 South Seventh Street
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