

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Bky. No. 03-48513-NCD

Adv. No. 04-4127

In re:

Russell L. Livingood and
Carolyn E. Livingood,

Debtors.

HomeTown Bank,

Plaintiff,

vs.

Russell L. Livingood and
Carolyn E. Livingood,

Defendants.

**NOTICE OF HEARING AND MOTION TO COMPEL DISCOVERY RESPONSES AND
EXTEND DISCOVERY DEADLINE**

TO: RUSSELL LIVINGOOD AND CAROLYN LIVINGOOD, BY AND THROUGH
THEIR ATTORNEY OF RECORD, ROBERT L. KALENDA, 919 W. ST. GERMAIN
ST., SUITE 2000, ST. CLOUD, MN 56301-3407.

PLEASE TAKE NOTICE, that HomeTown Bank (the "Bank"), hereby moves this Court
for the relief requested below and gives notice of hearing.

1. The Court will hold a hearing on this Motion on the 3rd day of November, 2004, at 10:30 a.m. before the Honorable Nancy C. Dreher, United States Bankruptcy Judge, Courtroom No. 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel may be heard.
2. Pursuant to Local Rules 9013-2 and 9006-1 any objection or response to this motion must be filed and delivered not later than October 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 25, 2004, which is seven business days before the time set for hearing (excluding Saturdays, Sundays and holidays). PURSUANT TO LOCAL RULE 9013-2(f), UNLESS A WRITTEN RESPONSE IS TIMELY SERVED AND FILED, THE BANKRUPTCY COURT MAY ENTER AN ORDER GRANTING THE REQUESTED RELIEF WITHOUT A HEARING.

3. This Motion arises under Bankruptcy Rules 7033, 7034 and 7037.
4. The Bank hereby moves the Court for the following:
 - a. For an Order directing Debtors to answer the Bank's Interrogatories to Defendants (Set I) within three (3) days of the date of the Court's Order.
 - b. For an Order extending the deadline for discovery 20 days from the date answers to Bank's Interrogatories to Defendants (Set I) are served on the Bank.
 - b. For an Order awarding the Bank's its attorney's fees, costs and expenses incurred in connection with this Motion.
5. This Motion is based upon all the files, records and proceedings herein, the Affidavit of Michael S. Dove, which is incorporated herein and attached hereto, and the supporting Memorandum of Law.

Dated this 13th day of October, 2004.

/e/ Michael S. Dove

Michael S. Dove #214310
GISLASON & HUNTER LLP
Attorneys for HomeTown Bank
2700 South Broadway
P. O. Box 458
New Ulm, MN 56073-0458
Phone: 507-354-3111

NULIB:189303.1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Bky. No. 03-48513-NCD
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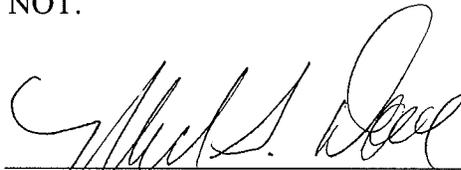
AFFIDAVIT OF MICHAEL S. DOVE

STATE OF MINNESOTA)
) ss.
COUNTY OF BROWN)

Michael S. Dove, being first duly sworn, states as follows:

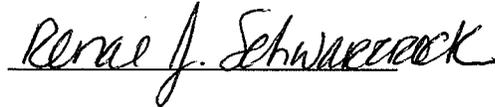
1. I am an attorney duly licensed to practice law in the State of Minnesota.
2. I represent HomeTown Bank in connection with this matter.
3. This Affidavit is submitted in support of the Bank's Motion to Compel Discovery Responses.
4. On June 10, 2004, I served Plaintiff's Interrogatories to Defendants (Set I) (the "Interrogatories") upon Mr. Robert Kalenda, attorney for defendants. A true and correct copy of the Interrogatories are attached hereto as Exhibit A.
5. I contacted Mr. Kalenda numerous times requesting answers to the Interrogatories. True and correct copies of my July 21, 2004, August 2, 2004, and October 7, 2004, letters to Mr. Kalenda are attached hereto as Exhibit B.
6. To date, Defendants have not answered the Interrogatories.

FURTHER YOUR AFFIANT SAYETH NOT.



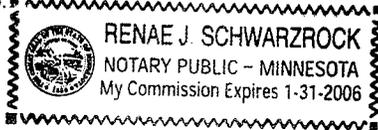
Michael S. Dove

Subscribed and sworn to before me
this 13 day of October, 2004.



Renae J. Schwarzrock

NULIB:189306.1



GISLASON & HUNTER LLP
ATTORNEYS AT LAW

NEW ULM MINNEAPOLIS MANKATO MAPLETON DES MOINES

OF COUNSEL
Donald F. Hunter³
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Ruth Ann Webster

Sidney P. Gislason
(1908-1985)
Robert M. Halvorson
(1945-1993)
C. Allen Dosland
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Andrew A. Willaert¹
Daniel A. Beckman
Steven J. Vatndal^{2,3*}
Michael S. Dove
Dustan J. Cross¹
James R. Gowling¹
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Matthew P. Kostolnik
Sarah M. Aho
Dan J. Hoehn[†]
J. Vincent Stevens
Anthony Gabor
David C. Kim
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June 10, 2004

Mr. Robert L. Kalenda
Attorney at Law
919 W. St. Germain Street
Suite 2000
St. Cloud, MN 56301-3407

Re: Russell & Carolyn Livingood
Bky. No. 03-48513-NCD
Our File No. 28028-003

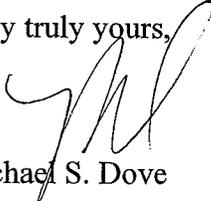
Dear Mr. Kalenda:

Enclosed and served upon you please find Plaintiff's Interrogatories to Defendants (Set I) and Plaintiff's Request for Production of Documents to Defendants (Set I).

If there are additional documents encompassed by the request for production of documents not already delivered to us, please produce those documents.

If you have any questions, please contact me. Thank you.

Very truly yours,


Michael S. Dove

MSD:JB:kkg
Enc.

cc: Mr. Terry Pederson
NULIB:164976.1

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Also admitted in:

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⁴ Admitted only in Virginia

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* Civil Trial Specialist

** Real Property Law Specialist
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State Bar Association

† Qualified ADR Neutral

EXHIBIT A

GISLASON & HUNTER LLP
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Robert M. Halvorson
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- ** Real Property Law Specialist
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July 21, 2004

VIA FACSIMILE

Mr. Robert L. Kalenda
Attorney at Law
919 W. St. Germain Street
Suite 2000
St. Cloud, MN 56301-3407

Re: Russell & Carolyn Livingood
Bky. No. 03-48513-NCD
Our File No. 28028-003

Dear Mr. Kalenda:

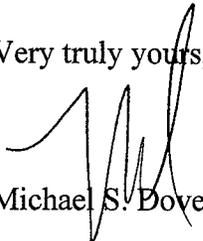
On June 10, 2004, I served Interrogatories and Request for Production of Documents. To date, I have yet to receive any response. In my letter to you, I requested that if there were additional documents encompassed by the request, that had not already been delivered to my office, that you would also produce those documents.

To date, I have yet to hear any type of response.

I need to have discovery responses no later than Thursday, July 28, 2004. In the event I have not received responses within that time frame, I will have no option but to bring a motion to compel the discovery responses. I will also seek to recover the attorney's fees, costs and expenses incurred in connection with that motion. I remain hopeful that will not be necessary.

Thank you for your attention.

Very truly yours,


Michael S. Dove

MSD:kkg
cc: Mr. Terry Pederson

NULIB:164976.1

EXHIBIT B

GISLASON & HUNTER LLP

ATTORNEYS AT LAW

NEW ULM MINNEAPOLIS MANKATO MAPLETON DES MOINES

OF COUNSEL
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† Qualified ADR Neutral

August 2, 2004

VIA FACSIMILE

Mr. Robert L. Kalenda
Attorney at Law
919 W St. Germain Street
Suite 2000
St. Cloud, MN 56301-3407

Re: Russell & Carolyn Livingood
Bky. No. 03-48513-NCD
Our File No. 28028-003

Dear Bob:

I am in receipt of your correspondence dated July 30, 2004. While that may answer the issue with respect to documents, I still believe I am entitled to Answers to Interrogatories. If you disagree, please advise. Thank you.

Very truly yours,



Michael S. Dove

MSD:kkg

cc: (Mr. Terry Pederson (w/enc.)

NULIB:181675.1

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ATTORNEYS AT LAW

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October 7, 2004

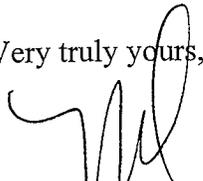
Mr. Robert L. Kalenda
Attorney at Law
919 W. St. Germain Street
Suite 2000
St. Cloud, MN 56301-3407

Re: Russell & Carolyn Livingood
Bky. No. 03-48513-NCD
Our File No. 28028-003

Dear Bob:

When we spoke recently, you assured me that discovery was forthcoming. Unfortunately, the time frame has run. If I have not received Answers to Interrogatories on or before October 12, 2004, I will have no alternative other than to bring a motion to compel. Thank you.

Very truly yours,



Michael S. Dove

MSD:kkq

NULIB:164976.1

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Bky. No. 03-48513-NCD
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In re:

Russell L. Livingood and
Carolyn E. Livingood,

Debtors.

HomeTown Bank,

Plaintiff,

vs.

Russell L. Livingood and
Carolyn E. Livingood,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO COMPEL DISCOVERY RESPONSES AND EXTEND DISCOVERY DEADLINE**

HomeTown Bank, (the "Bank") hereby submits this Memorandum of Law in support of its Motion to Compel Discovery Responses.

1. Compel Discovery Responses: The Bank has taken numerous steps short of bringing this Motion to obtain the answers to the Bank's Interrogatories to Defendants (Set I). As of the date of this Motion, Debtors have offered no assurances of producing the requested answers. See Affidavit of Michael S. Dove.

2. Extend Discovery Deadline: Pursuant to the Court's Scheduling Order entered May 11, 2004, all discovery in this matter shall be concluded no later than October 21, 2004. Deadlines shall not be extended except for good cause, and no motion shall be heard unless filed prior to the expiration of the deadline set. The Bank has requested the answers to its Interrogatories to

Defendants (Set I) numerous times, and Defendants have failed to provide the answers. Due to the Judge's calendar, a hearing on this matter could not be set until November 3, 2004, which is after the deadline discovery date. Therefore, good cause exists, and the deadline for discovery should be extended.

CONCLUSION

Based on the foregoing, the Bank's Motion to Compel Discovery Responses and Extend Discovery Deadline should be granted in its entirety.

Dated this 13th day of October, 2004.

/e/ Michael S. Dove

Michael S. Dove #214310
GISLASON & HUNTER LLP
Attorneys for HomeTown Bank
2700 South Broadway
P. O. Box 458
New Ulm, MN 56073-0458
Phone: 507-354-3111

NULIB:189305.1

(FORM DD)

U. S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Russell L. Livingood and
Carolyn E. Livingood

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Debtor(s): Case Number BKY 03-48513-NCD

Renae Schwarzrock, employed by Gislason & Hunter LLP, attorney(s) licensed to practice law in this court, with office address of 2700 South Broadway, P.O. Box 458, New Ulm, Minnesota 56073, declares that on October 13, 2004 I served the annexed **Notice of Hearing and Motion to Compel Discovery Responses and Extend Discovery Deadline, Affidavit of Michael S. Dove, Memorandum of Law in Support of Motion to Compel Discovery Responses and Extend Discovery Deadline and Proposed Order** upon each of the entities named below by facsimile directed to said Robert L. Kalenda at FAX No. 320.225.1631.:

Mr. Robert L. Kalenda
Attorney at Law
919 W. St. Germain Street
Suite 2000
St. Cloud, MN 56301-3407

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

Executed: October 13, 2004

Signed: /e/ Renae Schwarzrock

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Bky. No. 03-48513-NCD

Adv. No. 04-4127

Russell L. Livingood and
Carolyn E. Livingood,

Debtors.

HomeTown Bank,

Plaintiff,

vs.

Russell L. Livingood and
Carolyn E. Livingood,

Defendants.

ORDER

This matter came before the Honorable Nancy C. Dreher on HomeTown Bank's (the "Bank") Motion to Compel Discovery Responses. Based upon the arguments of counsel, all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

- a. That Debtors are directed to answer the Bank's Interrogatories to Defendants (Set I) within three (3) days of the date of this Order.
- b. That the deadline for discovery is extended 20 days from the date answers to Bank's Interrogatories to Defendants (Set I) are served on the Bank.
- c. That the Bank is awarded its attorney's fees, costs and expenses incurred in connection with this Motion.

Dated this ____ day of _____, 2004.

Honorable Nancy C. Dreher