

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Timothy James Juetten
and Jane Marie Juetten,**

Chapter 7

Debtor(s).

BK 04-40057 NCD

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-4181

**Timothy James Juetten
and Jane Marie Juetten,**

Defendant(s).

**NOTICE OF HEARING ON
APPLICATION FOR DEFAULT JUDGEMENT**

Habbo G. Fokkena, United States Trustee, Plaintiff, by and through his undersigned attorney, Sarah J. Wencil, hereby applies to the Court for default judgment to be entered against Timothy James Juetten and Jane Marie Juetten (the defendant debtors) on the following grounds:

1. A hearing will be held on the application on September 22, 2003 at 10:30 a.m. before the United States Bankruptcy Court, Courtroom 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.
2. Any response to the application must be filed and delivered not later than September 17, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays,

Sundays and legal holidays), or filed and served by mail not later than September 13, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1. UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

3. The United States Trustee filed the above named complaint under FED. R. BANKR. P. 7001(4) to seek a revocation of discharge of the defendant debtors pursuant to 11 U.S.C. § 727(d)(1), (d)(2) and (d)(3).

4. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and FED. R. BANKR. P. 4004. This application for default judgment arises under FED. R. BANKR. P. 7055; FED. R. CIV. P. 55; and LOCAL BANKR. R. 7055-1. This proceeding is a core proceeding.

5. The defendant debtors are residents of Minnesota.

6. Summons was issued on June 24, 2004, by the United States Bankruptcy Court, District of Minnesota, directing the defendant debtors to file an answer with the United States Bankruptcy Court within thirty (30) days pursuant to the Bankruptcy Rules. *See* Att. Ex. 1 (Docket Report in Adv. Case No. 04-4181). The United States Trustee mailed said complaint and summons to the defendant debtors and to their bankruptcy counsel on June 24, 2004. *See* Att. Ex. 2 (copy of Affidavit of Service). The certificate of service was docketed on June 24, 2004. *See* Att. Ex. 1.

7. An answer to the United States Trustee's complaint was due on approximately July 24, 2004. FED. R. BANKR. P. 7012(a).

8. As of the date of this Application, the defendant debtors have not filed an answer to the

United States Trustee's complaint. *See* Affidavit of Default.

9. The United States Trustee made the following allegations in his complaint:
 - a. The defendant debtors commenced the present bankruptcy case on January 7, 2004.
 - b. The defendant debtors filed schedules and a statement of financial affairs under penalty of perjury.
 - c. Total general unsecured debts in this case total approximately \$ 186,700.
 - d. On Original Schedule C, the debtors claimed as exempt a \$ 44,000 Bremer IRA Account and a \$ 300 Pioneer IRA account.
 - e. The Chapter 7 Trustee convened a Section 341 meeting of creditors on February 5, 2004.
 - f. The defendant debtors appeared and testified under oath at the meeting.
 - g. At the Section 341 meeting, the Chapter 7 Trustee informed the defendant debtors and counsel that the accounts were not exempt and directed the defendant debtors to stop withdrawing funds from both the Bremer IRA account and the Pioneer IRA account.
 - h. After the meeting of creditors, on February 6, 2004, the Chapter 7 Trustee sent a follow up letter directing counsel that she took the position that the Bremer IRA account and the Pioneer IRA account (IRAs) were not exempt, that the IRAs should be liquidated and that a full accounting of the funds on the date of filing should be provided to the Chapter 7 Trustee.
 - i. The Chapter 7 Trustee subsequently sent another follow up letter on February 18, 2004.

- j. On March 2, 2004, the Chapter 7 Trustee filed an objection to exemption of the IRA accounts.
- k. On March 11, 2004, counsel for defendant debtors sent the Chapter 7 Trustee some of the documentation on the Bremer IRA account.
- l. The documentation attached to the March 11, 2004 letter showed that on the approximate date of filing, the Bremer IRA account held \$ 26,580.95.
- m. On March 15, 2004, the Chapter 7 Trustee wrote to counsel for the defendant debtors stating that it was still her intention to object to the exemptions and offering to continue the hearing if the parties stipulate that the defendant debtors would not use the funds in the IRA accounts.
- n. The discharge was granted in this case on April 6, 2004.
- o. On April 14, 2004, the Bankruptcy Court entered an Order that the Bremer Bank and Pioneer IRAs and the Bremer Bank and Affinity FCU deposit accounts were not exempt and that directed the defendant debtors to turn the non-exempt property over to the Chapter 7 Trustee [hereinafter April 14 Order].
- p. The defendant debtors did not appeal the April 14 Order.
- q. On April 27, 2004, the Chapter 7 Trustee sent counsel for the defendant debtors a copy of the Court Order and a demand letter for turnover of the IRA funds and other bank accounts.
- r. On April 27, 2004, the Chapter 7 Trustee sent a letter to Bremer Bank with a copy of the April 14 Order requesting turnover of the IRA funds.

- s. On April 29, 2004, the Chapter 7 Trustee held a telephone conference with Bremer Bank, wherein she was informed that \$ 12,504.33 was withdrawn from the Bremer IRA account on approximately April 13, 2004, the day before the hearing on the objection to the claimed exemption in the Bremer IRA account.
 - t. In the April 29, 2004 phone conference, the Chapter 7 Trustee learned that there were other accounts at Bremer Bank.
 - u. On May 20, 2004, the Chapter 7 Trustee held another conference with Bremer Bank regarding documents.
 - v. On May 20, 2004, the Chapter 7 Trustee sent a new demand letter to counsel for the defendant debtors requesting that the defendant debtors turn over the funds that were removed from the IRA accounts.
 - w. On May 21, 2004, the Chapter 7 Trustee learned that the defendant debtors had approximately \$ 1,000 remaining in non-exempt savings accounts at Bremer Bank.
 - x. On June 5, 2004, Bremer Bank remitted \$ 1,18.96 in funds to the Chapter 7 Trustee.
 - y. The Chapter 7 Trustee brought this matter to the attention of the Office of the U.S. Trustee via a telephone call on May 21, 2004 and later by letter on June 2, 2004.
10. In the Complaint, the United States Trustee adopted each of the factual allegations set forth in paragraph 9 herein and alleged that the factual allegations supported the following Counts to revoke the discharge of the defendant debtors:

COUNT I

- 11. The defendant debtors obtained their discharge through fraud.

12. The U.S. Trustee did not know of the fraud of the defendant debtors until after the discharge was entered in this case.

13. The Chapter 7 Trustee did not know of the fraud of the defendant debtors until after the discharge was entered in this case.

14. 11 U.S.C. § 727(d)(1) provides that a basis exists to revoke the discharge if a debtor (defendant) obtains a discharge through fraud and the requesting party did not know of such fraud until after the granting of such discharge.

15. Plaintiff requests that the Bankruptcy Court revoke the discharge pursuant to 11 U.S.C. § 727(d)(1).

COUNT II

16. The defendant debtors acquired property of the estate.

17. The defendant debtors knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee.

18. 11 U.S.C. § 727(d)(2) provides that a basis exists to revoke the discharge if a debtor (defendant) acquires property that is property of the estate and knowingly and fraudulently fails to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee.

19. Plaintiff requests that the Bankruptcy Court revoke the discharge pursuant to 11 U.S.C. § 727(d)(2).

COUNT III

20. The defendant debtors failed to comply with the Bankruptcy Court's Order dated April

14, 2004.

21. Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtors failed to obey a lawful order of the court.

22. 11 U.S.C. § 727(d)(3) provides that a basis to revoke a discharge exists if the debtors (defendants) commits an act specified in subsection (a)(6) of Section 727.

23. Plaintiff requests that the Bankruptcy Court revoke the discharge pursuant to 11 U.S.C. § 727(d)(3).

WHEREFORE, the United States Trustee requests that the Bankruptcy Court grant the application for default judgment and revoke the defendant debtors' discharge in bankruptcy case number 04-40057 pursuant to 11 U.S.C. § 727(d)(1), (d)(2) and (d)(3).

Dated: August 6, 2004

Respectfully submitted,
HABBO G. FOKKENA
United States Trustee
Region 12

By: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
United States Trustee's Office
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
IA ATTY No. 14014
(612) 664-5500

Return to Search Results Page

U.S. Bankruptcy Court
District of Minnesota (Minneapolis)

Adversary Proceeding #: 04-4181

Date filed: 6/24/04

Assigned to: JUDGE NANCY C DREHER

Related Bankruptcy Case #: 04-40057

In Re: TIMOTHY JAMES JUETTEN, JANE MARIE JUETTEN

Demand: \$0,000

Nature of Suit: 424

=====

* Attorneys *

HABBO G FOKKENA
300 S 4TH ST STE 1015
MINNEAPOLIS, MN 55415
* Plaintiff *

SARAH J WENCIL
US TRUSTEE OFFICE
300 S 4TH ST STE 1015
MINNEAPOLIS, MN 55415
612-664-5500

v.

JANE MARIE JUETTEN
1267 13TH ST SW
WILLMAR, MN 56201
SSN: XXX-XX-2757
* Defendant *

TIMOTHY JAMES JUETTEN
1267 13TH ST SW
WILLMAR, MN 56201
SSN: XXX-XX-1248
* Defendant *

Proceedings include all events.

04-4181 In re: HABBO G FOKKENA and JANE

6/24/04 1 Complaint (04-4181) HABBO G FOKKENA
vs. JANE MARIE JUETTEN . NOS 424
Objection To Discharge (727) by Sarah Wencil on: Thu Jun
24 11:07:13 2004 (A052) [EOD 06/24/04] [04-4181]

6/24/04 2 Summons issued on TIMOTHY JAMES JUETTEN, JANE MARIE
JUETTEN. Answer due 7/26/04 for TIMOTHY JAMES JUETTEN, for
JANE MARIE JUETTEN Non-Service of Process Deadline 10/22/04
(A052) [EOD 06/24/04] [04-4181]

6/24/04 3 Certificate of Service by Plaintiff HABBO G FOKKENA of
[2-1] Summons by JANE MARIE JUETTEN, TIMOTHY JAMES
JUETTEN, [1-1] Complaint NOS 424 Objection To Discharge
(727) . (A052) [EOD 06/24/04] [04-4181]

6/24/04 4 Pro Bono Notice to Defendants Re: [1-1] Complaint NOS 424
Objection To Discharge (727) . Court's Certificate of
Mailing. (kkn) [EOD 06/24/04] [04-4181]

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Timothy James Juetten and
Jane Marie Juetten**

Debtor(s).

Chapter 7

BK 04-40057 NCD

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No.

**Timothy James Juetten and
Jane Marie Juetten**

Defendant(s).

AFFIDAVIT OF SERVICE

The undersigned hereby certifies under penalty of perjury that she is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers.

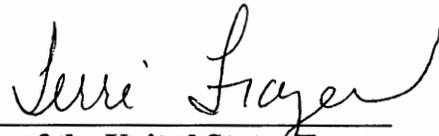
That on June 24, 2004, she served a copy of the United States Trustee's Summons & Complaint to Revoke Discharge and Verification in the above-referenced case by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s):

Timothy James and Jane Marie Juetten
1267 13th Street SW
Willmar, MN 56201

David F. Schmitz
9301 Bryant Avenue South Suite 102
Bloomington, MN 55420

Dorraine A. Larison
1010 W. St. Germain Rm 600
St. Cloud, MN 56301



**Office of the United States Trustee
Terri Frazer**

**Subscribed and sworn to before
me this 24th day of June, 2004.**



Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Timothy James Juetten
and Jane Marie Juetten,**

Chapter 7

Debtor(s).

BK 04-40057 NCD

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-4181

**Timothy James Juetten
and Jane Marie Juetten,**

Defendant(s).

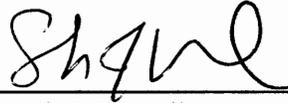
AFFIDAVIT OF DEFAULT

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney for the United States Trustee.
2. I am the attorney of record for the United States Trustee in the above entitled adversary proceeding.
3. I have not been served with an answer by the defendants.
4. A Docket report as of August 3, 2004 shows that no answer was docketed by the Bankruptcy Court within the time prescribed by the Bankruptcy Rules. *See* Motion for Default (Att. Ex. 1).

This concludes my Affidavit.

Dated: August 5, 2004

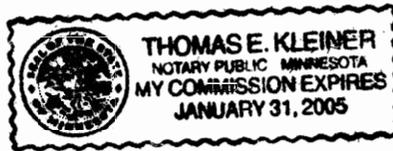


Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me This 5th Day of August, 2004.



Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Timothy James Juetten
and Jane Marie Juetten,**

Chapter 7

Debtor(s).

BK 04-40057 NCD

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-4181

**Timothy James Juetten
and Jane Marie Juetten,**

Defendant(s).

AFFIDAVIT OF IDENTIFICATION

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled adversary proceeding.
3. The name and address of the defendant debtors in the above entitled matter is listed on the Notice of Commencement of Case under Chapter 7 of the Bankruptcy Code (case number 04-40057), as the following: Timothy James and Jane Marie Juetten, 1267 13th Street S.W., Willmar, MN 56201. *See* Att. Ex. 1.
4. Original Schedule I lists that the defendant debtors are married, employed and

have five dependents. *See* Att. Ex. 2.

5. According to the attached Schedule, the defendant debtors are not infants and are not employed by a military organization. The schedules in case number 04-40057 were signed by the defendant debtors under penalty of perjury. *See* Att. Ex. 3.
6. The defendant debtors are represented by counsel in bankruptcy case number 04-40057: David F. Schmitz, 9301 Bryant Avenue South, Suite 102, Bloomington, MN 55420.
7. Based on the foregoing, the United States Trustee is of the belief that the defendant debtors are competent.

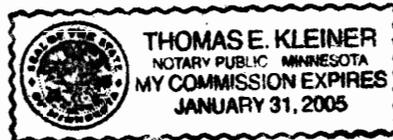
Dated: August 5, 2004



Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me This 5th Day of August, 2004.


Notary Public



UNITED STATES BANKRUPTCY COURT

District of Minnesota

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 01/07/04.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected by accessing the court's web site at www.mnb.uscourts.gov or at the bankruptcy clerk's office at the address listed below. **NOTE:** The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):

TIMOTHY JAMES JUETTEN
1267 13TH ST SW
WILLMAR, MN 56201

JANE MARIE JUETTEN

Case Number:
04 - 40057 - NCD

Social Security/Taxpayer ID Nos.:
XXX-XX-1248
XXX-XX-2757

Attorney for Debtor(s) (name and address):

DAVID F SCHMITZ
9301 BRYANT AVE S STE 102
BLOOMINGTON, MN 55420
Telephone number: 952-884-4666

Bankruptcy Trustee (name and address):

DORRAINE A LARISON
1010 W ST GERMAIN RM 600
ST CLOUD, MN 56301
Telephone number: 320-252-4414

Meeting of Creditors:

Date: **February 5, 2004** Time: **11:00 am** Location: **STEARNS COUNTY COURTHOUSE
RM 134
725 COURTHOUSE SQUARE
ST CLOUD, MN 56303**

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:
04/05/04

Deadline to Object to Exemptions:
Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.

Address of the Bankruptcy Clerk's Office:

U S BANKRUPTCY COURT
U S COURTHOUSE RM 301
300 S 4TH ST
MINNEAPOLIS, MN 55415
Web address: www.mnb.uscourts.gov

For the Court:

Clerk of the Bankruptcy Court:
PATRICK G. DE WANE

Hours Open: Monday - Friday 8:00 AM - 5:00 PM

Date: 01/08/04

Debtor(s)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status		DEPENDENTS OF DEBTOR AND SPOUSE	
Married	RELATIONSHIP	AGE	
	Daughter	17	
	Daughter	12	
	Daughter	11	
	Daughter	6	
	Daughter	2	
EMPLOYMENT: DEBTOR		SPOUSE	
Occupation	Cashier, Food Service, Floor Clerk	Occupation	Food Service
Name of Employer	Target	Name of Employer	Willmar Public Schools
How long employed	1 Year	How long employed	
Address of Employer	2505 S.W. 1st Street Willmar, MN 56201	Address of Employer	201 Willmar Avenue S.E. Willmar, MN 56201

Income: (Estimate of average monthly income)		DEBTOR	SPOUSE
Current Monthly gross wages, salary, and commissions (pro rata if not paid monthly)		\$ <u>750.00</u>	\$ <u>530.00</u>
Estimated monthly overtime		\$ _____	\$ _____
SUBTOTAL		\$ <u>750.00</u>	\$ <u>530.00</u>
LESS PAYROLL DEDUCTIONS			
a. Payroll taxes and Social Security		\$ <u>13.31</u>	\$ <u>20.11</u>
b. Insurance		\$ _____	\$ _____
c. Union dues		\$ _____	\$ _____
d. Other (specify) _____		\$ _____	\$ _____
SUBTOTAL OF PAYROLL DEDUCTIONS		\$ <u>13.31</u>	\$ <u>20.11</u>
TOTAL NET MONTHLY TAKE HOME PAY		\$ <u>736.69</u>	\$ <u>509.89</u>
Regular income from operation of business or profession or farm (attach detailed statement)		\$ _____	\$ _____
Income from real property		\$ _____	\$ _____
Interest and dividends		\$ _____	\$ _____
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above		\$ _____	\$ _____
Social Security or other government assistance (Specify) _____		\$ _____	\$ _____
Pension or retirement income		\$ _____	\$ _____
Other monthly income (Specify) _____		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
TOTAL MONTHLY INCOME		\$ <u>736.69</u>	\$ <u>509.89</u>
TOTAL COMBINED MONTHLY INCOME \$ <u>1,246.58</u> (Report also on Summary of Schedules)			

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Timothy & Jane Juetten
Debtor(s).

SIGNATURE DECLARATION

Case No. _____

- PETITION, SCHEDULES & STATEMENTS
 CHAPTER 13 PLAN
 SCHEDULES AND STATEMENTS ACCOMPANYING VERIFIED CONVERSION
 AMENDMENT TO PETITION, SCHEDULES & STATEMENTS
 MODIFIED CHAPTER 13 PLAN
 OTHER (Please describe: _____)

I [We], the undersigned debtor(s) or authorized representative of the debtor, *make the following declarations under penalty of perjury:*

- The information I have given my attorney and provided in the electronically filed petition, statements, schedules, amendments, and/or chapter 13 plan, as indicated above, is true and correct;
- The information provided in the "Debtor Information Pages" submitted as a part of the electronic commencement of the above-referenced case is true and correct;
- [individual debtors only] If no Social Security Number is included in the "Debtor Information Pages" submitted as a part of the electronic commencement of the above-referenced case, it is because I do not have a Social Security Number;
- I consent to my attorney electronically filing with the United States Bankruptcy Court my petition, statements and schedules, amendments, and/or chapter 13 plan, as indicated above, together with a scanned image of this Signature Declaration and the completed "Debtor Information Pages," if applicable; and
- [corporate and partnership debtors only] I have been authorized to file this petition on behalf of the debtor.

Date: 12-29-03

X Tim Juetten
Signature of Debtor or Authorized Representative

X Jane Juetten
Signature of Joint Debtor

Tim Juetten
Printed Name of Debtor or Authorized Representative

Jane Juetten
Printed Name of Joint Debtor

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Timothy James Juetten
Jane Marie Juetten**

Chapter 7

Debtor(s).

BK 04-40057 NCD

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-4181

**Timothy James Juetten
and Jane Marie Juetten**

Defendant(s).

AFFIDAVIT ON MERITS AND AMOUNT DUE

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled case.
3. A monetary judgment has not been requested in this adversarial proceeding. The relief sought by the United States Trustee is a revocation of the defendant debtors' Chapter 7 discharge in case number 04-40057.
4. The United States Trustee has a legal basis upon which to request such relief pursuant to the authority of 11 U.S.C. § 727(d)(1), (d)(2) and (d)(3).
5. Said relief is supported by the facts set forth in paragraph 9 of the Application for

for Default Judgment.

6. The facts set forth support the following three Counts to revoke the discharge:

COUNT I

7. The defendant debtors obtained their discharge through fraud.

8. The U.S. Trustee did not know of the fraud of the defendant debtors until after the discharge was entered in this case.

9. The Chapter 7 Trustee did not know of the fraud of the defendant debtors until after the discharge was entered in this case.

10. 11 U.S.C. § 727(d)(1) provides that a basis exists to revoke the discharge if a debtor (defendant) obtains a discharge through fraud and the requesting party did not know of such fraud until after the granting of such discharge.

11. Plaintiff requests that the Bankruptcy Court revoke the discharge pursuant to 11 U.S.C. § 727(d)(2).

COUNT II

12. The defendant debtors acquired property of the estate.

13. The defendant debtors knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee.

14. 11 U.S.C. § 727(d)(2) provides that a basis exists to revoke the discharge if a debtor (defendant) acquires property that is property of the estate and knowingly and fraudulently fails to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee.

15. The Plaintiff requests that the Bankruptcy Court revoke the discharge pursuant to

11 U.S.C. § 727(d)(2).

COUNT III

16. The defendant debtors failed to comply with the Bankruptcy Court's Order dated April 14, 2004.

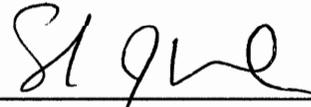
17. Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtors failed to obey a lawful order of the court.

18. 11 U.S.C. § 727(d)(3) provides that a basis to revoke a discharge exists if the debtors (defendants) commits an act specified in subsection (a)(6) of Section 727.

19. The Plaintiff requests that the Bankruptcy Court revoke the discharge pursuant to 11 U.S.C. § 727(d)(3).

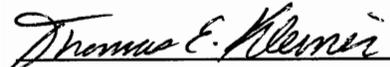
This completes my affidavit.

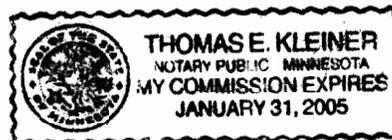
Dated: August 5, 2004



Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me This 5th Day of August, 2004.


Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Timothy James Juetten
Jane Marie Juetten**

Chapter 7

Debtor(s).

BK 04-40057 NCD

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-4181

**Timothy James Juetten
and Jane Marie Juetten**

Defendant(s).

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT**

At Minneapolis, Minnesota on this _____ day of _____,
2004, a hearing was held on the United States Trustee's Application for Default Judgment, which
was supported by an Affidavit of Default, an Affidavit of Identification, and an Affidavit on the
Merits as required by Local Bankruptcy Rule 7055-1. Appearances were noted in the record.

Findings of Fact

1. The defendant debtors commenced the present bankruptcy case on January 7,
2004.
2. The defendant debtors filed schedules and a statement of financial affairs under
penalty of perjury.

3. On Original Schedule C, the debtors claimed as exempt a \$ 44,000 Bremer IRA Account and a \$ 300 Pioneer IRA account.

4. At the Section 341 meeting in this case, the Chapter 7 Trustee informed the defendant debtors and counsel that the accounts were not exempt and directed the defendant debtors to stop withdrawing funds from both the Bremer IRA account and the Pioneer IRA account.

5. After the meeting of creditors, on February 6, 2004, the Chapter 7 Trustee sent a follow up letter directing counsel that she took the position that the Bremer IRA account and the Pioneer IRA account (IRAs) were not exempt, that the IRAs should be liquidated and that a full accounting of the funds on the date of filing should be provided to the Chapter 7 Trustee.

6. The Chapter 7 Trustee subsequently sent another follow up letter on February 18, 2004.

7. On March 2, 2004, the Chapter 7 Trustee filed an objection to exemption of the IRA accounts.

8. On March 11, 2004, counsel for defendant debtors sent the Chapter 7 Trustee some of the documentation on the Bremer IRA account.

9. The documentation attached to the March 11, 2004 letter showed that on the approximate date of filing, the Bremer IRA account held \$ 26,580.95.

10. On March 15, 2004, the Chapter 7 Trustee wrote to counsel for the defendant debtors stating that it was still her intention to object to the exemptions and offering to continue the hearing if the parties stipulate that the defendant debtors would not use the funds in the IRA accounts.

11. The discharge was granted in this case on April 6, 2004.
12. On April 14, 2004, the Bankruptcy Court entered an Order holding that the Bremer Bank and Pioneer IRAs were not exempt and that the Bremer Bank and Affinity FCU deposit accounts were not exempt and directed the defendant debtors to turn the non-exempt property over to the Chapter 7 Trustee [hereinafter "April 14 Order"].
13. The defendant debtors did not appeal the April 14 Order.
14. On April 27, 2004, the Chapter 7 Trustee sent counsel for the defendant debtors a copy of the April 14 Order and a demand letter for turnover of the IRA funds and other bank accounts.
15. On April 27, 2004, the Chapter 7 Trustee sent a letter to Bremer Bank with a copy of the April 14 Order requesting turnover of the IRA funds.
16. On April 29, 2004, the Chapter 7 Trustee held a telephone conference with Bremer Bank, wherein she was informed that \$ 12,504.33 was withdrawn from the Bremer IRA account on approximately April 13, 2004, the day before the hearing on the objection to the claimed exemption in the Bremer IRA account.
17. On May 21, 2004, the Chapter 7 Trustee learned that the defendant debtors had approximately \$ 1,000 remaining in non-exempt savings accounts at Bremer Bank.
18. On June 5, 2004, Bremer Bank remitted \$ 1,18.96 in funds to the Chapter 7 Trustee.
19. The Chapter 7 Trustee brought this matter to the attention of the Office of the U.S. Trustee via a telephone call on May 21, 2004 and later by letter on June 2, 2004.

Conclusions of Law

Count I - 11 U.S.C. § 727(d)(1)

28. The defendant debtors obtained their discharge through fraud.

29. The U.S. Trustee did not know of the fraud of the defendant debtors until after the discharge was entered in this case.

30. The Chapter 7 Trustee did not know of the fraud of the defendant debtors until after the discharge was entered in this case.

31. A basis exists to revoke the discharge of the defendant debtors in the underlying bankruptcy case pursuant to 11 U.S.C. § 727(d)(1).

Count II - 11 U.S.C. § 727(d)(2)

32. The defendant debtors acquired property of the estate.

33. The defendant debtors knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee.

34. A basis exists to revoke the discharge of the defendant debtors in the underlying bankruptcy case pursuant to 11 U.S.C. § 727(d)(2).

COUNT III - 11 U.S.C. § 727(d)(3)

35. The defendant debtors failed to comply with the Bankruptcy Court's Order dated April 14, 2004.

36. Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtors failed to obey a lawful order of the court.

37. A basis exists to revoke the discharge of the defendant debtors in the underlying bankruptcy case pursuant to 11 U.S.C. § 727(d)(3).

Order for Judgment

IT IS HEREBY ORDERED: The United States Trustee's application for default judgment in this adversary proceeding is granted. The discharge in bankruptcy case number 04-40057 is revoked. LET JUDGMENT BE ENTERED ACCORDINGLY.

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Timothy James Juetten
Jane Marie Juetten**

Chapter 7

Debtor(s).

BK 04-40057 NCD

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-4181

**Timothy James Juetten
and Jane Marie Juetten**

Defendant(s).

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers.

That on August 6, 2004, she served a copy of the attached: MOTION FOR APPLICATION FOR HEARING ON DEFAULT JUDGEMENT, AFFIDAVIT OF DEFAULT, AFFIDAVIT OF IDENTIFICATION, AFFIDAVIT ON THE MERITS, and proposed FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGEMENT, by placing said copies in a postpaid envelope addressed to the person(s), herein after named, at the place and address stated below, which is the last known address, and by depositing said envelope

and contents in the United States Mail at Minneapolis, Minnesota.

Addressees:

Timothy James Juetten
Jane Marie Juetten
1267 13th Street S.W.
Willmar, MN 56201

David F. Schmitz
9301 Bryant Avenue South, Suite 102
Bloomington, MN 55420

Dorriane A. Larison
1010 West St. Germain, Suite 600
St. Cloud, MN 56301



**Office of the United States Trustee
Terri Frazer**

**Subscribed and sworn to before
me this 6th day of August, 2004.**


Notary Public

