

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Jeffrey K. Rhoades and  
Jenny L. Rhoades,

Debtor(s).

BKY Case No. 03-45069-RJK  
Chapter 7

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Julia A. Christians, Trustee,

Plaintiff,

vs.

Jeffrey K. Rhoades and  
Jenny L. Rhoades,

Defendant(s).

ADV No. 04- 4194-RJK

**NOTICE OF HEARING AND MOTION  
FOR SUMMARY JUDGMENT**

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TO: DEFENDANTS:

1. Julia A. Christians, Trustee of the above-captioned bankruptcy estate, moves the Court for the relief requested below and gives notice of hearing.

2. The Honorable Robert J. Kressel, United States Bankruptcy Judge, will hold a hearing on this motion for summary judgment at 11:00 a.m. on September 15, 2004, in Courtroom No. 8 West, United States Court House, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than September 8, 2004, which is 7 days before the time set for the hearing, or filed and served by mail not later than September 3, 2004, which is ten days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 201. This proceeding is a core proceeding. This case was

originally filed as a Chapter 13 case on July 16, 2003 and was converted to a Chapter 7 case on January 21, 2004. This case is now pending before the Court.

5. This motion for summary judgment arises under Fed. R. Civ. P. 56, 11 U.S.C. §542 and §727, and Bankruptcy Rule 7056. This motion is filed under Bankruptcy Rule 9014 and Local Rules 1201-1215. Movant seeks entry of summary judgment with respect to claims for turnover of property of the estate and for revocation of discharge as set forth in Plaintiff's Complaint.

6. This motion is based upon the attached Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment, the Affidavit of Julia A. Christians, and upon the files, records, and proceedings herein.

WHEREFORE, Plaintiff Julia A. Christians, Trustee moves the Court for an order that summary judgment be granted against Defendants revoking their discharge and entering judgment in the amount of \$1,997.34, plus costs and disbursements, plus interest from the date of commencement of the action and for such other relief as may be just and equitable.

LAPP, LIBRA, THOMSON, STOEBNER  
& PUSCH, CHARTERED

Dated: August 24, 2004

/e/ Julia A. Christians  
Julia A. Christians (#157867)  
One Financial Plaza, Suite 2500  
120 South Sixth Street  
Minneapolis, MN 55402  
612/ 338-5815

Attorneys for Plaintiff, Julia A. Christians, Trustee

**VERIFICATION**

I, Julia A. Christians, the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: August 24, 2004

By: /e/ Julia A. Christians  
Julia A. Christians, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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Chapter 7  
Jeffrey K. Rhoades and  
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Debtor(s).

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Julia A. Christians, Trustee,  
Plaintiff,  
vs.

Jeffrey K. Rhoades and  
Jenny L. Rhoades,  
Defendant(s). **AFFIDAVIT OF JULIA A. CHRISTIANS,  
TRUSTEE**

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STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

Julia A. Christians, being first duly sworn upon oath says as follows.

1. I am the Trustee of the Bankruptcy Estate of Jeffrey K. Rhoades and Jenny L. Rhoades (the "Estate"), and make this affidavit based upon my own personal knowledge.
2. Defendants' original Chapter 7 schedules listed a homestead valued at \$134,000 subject to a mortgage of \$117,975 and claimed exempt under 11 U.S.C. §522(d)(1). However, Debtors testified the actual value of the home was \$174,000. When informed the Trustee would object and/or seek turnover of the portion of homestead not covered by the federal exemption, Debtors filed amended schedules, switching to use of the Minnesota state exemption statutes.
3. After the date of the filing of their petition, Defendants received funds arising from their 2003 tax refunds. A portion of said refunds constitutes property of the bankruptcy estate, to the extent of \$1,793.34.
4. The Trustee made written demand upon Debtors for turnover of their 2003 tax refunds by letter dated March 15, 2004.

5. On May 19, 2004, upon the Trustee's objection to claimed exemptions, the Court entered an Order disallowing the Debtors' asserted exemptions in a discrimination claim and their Wells Fargo checking and savings account deposits.

6. As of the filing date, Debtors' funds on deposit consisted of the sum of \$204.00.

7. The Trustee made demand upon Defendants for turnover of the estate's share of the refunds amounting to \$1,793.34, the deposits amounting to \$204.00, copies of all pleadings and/or other documents related to the discrimination claim and any recovery from the claim, but Defendants failed and refused to comply with turnover.

8. On June 9, 2004, the Court entered an Order directing Debtors turn over to the Trustee within 7 days the sum of \$204.00, as and for funds on deposit in bank accounts as of the filing date, copies of all pleadings and/or other documents related to Debtor's pending discrimination claim against a former employer; any and all funds recovered by Debtors in connection with said claim; and, the sum of \$1,793.34 as and for the estate's portion of Debtors' tax refunds received after the filing.

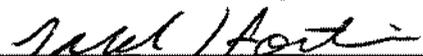
9. The Trustee made written demand by letter dated June 10, 2004 for Defendants to comply with the June 9, 2004 Court Order but Defendants have not obeyed said Order.

10. Plaintiff has incurred \$154.65 in costs for filing and service fees. Interest from the date of commencement of this action at the prejudgment rate amounts to \$10.29.

Further your affiant sayeth not.

  
\_\_\_\_\_  
Julia A. Christians, Trustee

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of August, 2004.

  
\_\_\_\_\_  
Notary Public



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re: BKY Case No. 03-45069-RJK  
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Debtor(s).

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Julia A. Christians, Trustee,  
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vs.

Jeffrey K. Rhoades and  
Jenny L. Rhoades,  
Defendant(s).

ADV No. 04- 4194-RJK

**MEMORANDUM OF LAW IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

Plaintiff Julia A. Christians, Trustee, (“Trustee”) respectfully submits this memorandum of law in support of her motion for summary judgment against Defendants Jeffrey K. Rhoades and Jenny L. Rhoades, (“Defendants” or “Debtors”).

I. STANDARDS FOR SUMMARY JUDGMENT

Summary judgment is appropriate when, as here, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Bankr. P. 7056 (incorporating Fed. R. Civ. P. 56 (c)).

It is well established that when a party who carries the ultimate burden of proof at trial seeks summary judgment, that party must adduce evidence establishing each and every element of its prima facie case. In re Mathern, 137 B.R. 311, 314 (Bankr. D. Minn.), aff'd, 141 B.R. 667 (D. Minn. 1992); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex v. Catrett, 477 U.S. 317 (1986). When the moving party has adduced such evidence, the burden then shifts to the non-moving party to produce evidence indicating the existence of a genuine issue of material fact.

Anderson, 477 U.S. at 250-52. The responsive evidence, however, must be probative in nature and must “do more than simply show that there is some metaphysical doubt as to the material fact.”

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 568 (1986); Street v. J.C. Bradford & Co., 886 F.2d 1472 (6th Cir. 1989). Rather, “there must be evidence on which the jury could reasonably find for the [non-moving party].” Anderson, 477 U.S. at 252.

Summary judgment may also be granted where the moving party adduces no direct evidence going to the existence of one or more of the essential elements of a claim or defense. In such cases, the moving party may rely on inferences from the facts submitted to establish the existence of an essential element of the moving party’s case. In re Tveten, 70 B.R. 529 (Bankr. D. Minn. 1987), aff’d, 848 F.2d 871 (8th Cir. 1988). The ultimate question for purposes of summary judgment in such cases is whether reasonable minds could differ as to the inferences to be drawn from the facts presented in the record. Anderson, 477 U.S. at 250-52.

Reasonable minds cannot differ as to the inferences drawn from the factual evidence presented in the record where the moving party has produced overwhelming evidence to support an inference and the non-moving party fails to produce significant, probative evidence countering that inference. First Nat’l Bank of Arizona v. City Service Co., 391 U.S. 253 (1968). Thus, in appropriate circumstances, a court may rely on inferences in granting a motion for summary judgment, even where subjective intent is an issue. Barnes v. Arden Mayfair, Inc., 759 F. 2d 676 9<sup>th</sup> Cir. 1985); In re Devers, 759 F. 2d 751 (9th Cir. 1985); Mutual Fund Investors, Inc. v. Putnam Mgmt. Co., 553 F. 2d 620 (9th Cir. 1977).

## II. PLAINTIFF HAS ESTABLISHED THE ELEMENTS TO MAINTAIN AN ACTION FOR TURNOVER AND REVOCATION OF DISCHARGE.

Defendants’ original Chapter 7 schedules listed a homestead valued at \$134,00 subject to a mortgage of \$117,975 and claimed exempt under 11 U.S.C. §522(d)(1). However, Debtors testified the actual value of the home was \$174,000. When informed the Trustee would object and/or seek

turnover of the portion of homestead not covered by the federal exemption, Debtors filed amended schedules, switching to use of the Minnesota state exemption statutes. *Affidavit of Julia A. Christians*, para. 2. Upon the Trustee's objection to Debtors' amended claims of exemption in a discrimination claim against a former employer and the listed \$204.00 in Wells Fargo checking and savings account deposits, the Court entered an order on May 19, 2004 disallowing Debtors' exemptions in the claim and the deposits. *Affidavit of Julia A. Christians*, para. 5.

Pursuant to 11 U.S.C. §542 (a), Debtors were obligated to turn over the property of the estate to the Trustee, including tax refunds due the debtors, but not yet paid, at the time of the filing and other non-exempt assets. On March 15, 2004, the Trustee made written demand upon Debtors for turnover of their 2003 tax refunds due upon filing and received after the filing. *Affidavit of Julia A. Christians*, para. 4. Based upon the Debtors' date of filing in 2003, the amount of refunds constituting property of the estate was \$1,793.34. *Affidavit of Julia A. Christians*, para. 3.

The Trustee made demand and brought a motion for turnover by Debtors of \$204.00 as and for the non-exempt deposits, copies of all pleadings and/or other documents related to the pending discrimination claim, all funds recovered in connection with said claim and the sum of \$1,793.34 as and for the estate's portion of the tax refunds received after the filing. *Affidavit of Julia A. Christians*, para. 7. Debtors failed to respond. On June 9, 2004 the Court entered an order directing Debtors to turn over the above-described property and documents. *Affidavit of Julia A. Christians*, para. 8. On June 10, 2004, the Trustee made written demand upon Debtors to comply with the Order and to surrender said assets to the Trustee or face sanctions. Debtors have not obeyed the June 9, 2004 Court Order. *Affidavit of Julia A. Christians*, para. 9.

Defendants' Answer admits Defendants have not to date complied with turnover and have not obeyed the June 9, 2004 Court Order. *Answer of Jeffrey K. Rhoades and Jenny L. Rhoades*, para. 4 and 6.

Pursuant to 11 U.S.C. §727(d)(2), the court shall revoke a discharge if ... the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report such acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee. 11 U.S.C. §727(d)(2).

Pursuant to 11 U.S.C. §727(d)(3) and (a)(6), the court shall revoke a discharge if ... the debtor has refused, in the case, to obey any lawful order of the court, other than an order to respond to a material question or to testify. 11 U.S.C. §727(d)(3), referencing 11 U.S.C. §727(a)(6).

Debtors herein collected the refunds they received post-petition and spent them. They have not surrendered said funds nor the other assets despite more than 5 (five) months of demands by the Trustee and a Court Order entered more than 2 (two) months ago. Defendants' Answer admits Plaintiff's prima facie case. Defendant's defense that they may someday get around to repaying the funds is an expressed intent that does not substitute for the statute's requirements of surrender of estate property and compliance with orders of the court. Grounds exist for revocation of the debtors' discharge.

Accordingly, Plaintiff is entitled to summary judgment on its action, for turnover in the amount of \$1,997.34 plus prejudgment interest, costs and disbursements, and for revocation of Debtors' discharge.

LAPP, LIBRA, THOMSON, STOEIBNER  
& PUSCH, CHARTERED

Dated: August 24, 2004

/e/ Julia A. Christians  
Julia A. Christians (#157867)  
One Financial Plaza, Suite 2500  
120 South Sixth Street  
Minneapolis, MN 55402  
612/ 338-5815  
Attorneys for Plaintiff, Julia A. Christians, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:	)	Chapter 7
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Jeffrey K. Rhoades and	)	
Jenny L. Rhoades,	)	
	)	
Debtors.	)	
<hr/>		
Julia A. Christians, Trustee	)	
	)	ADV No. 04-4194-RJK
Plaintiff,	)	
vs.	)	
	)	
Jeffrey K. Rhoades and	)	
Jenny L. Rhoades,	)	
	)	
Debtors.	)	

**UNSWORN CERTIFICATE OF SERVICE**

I, Sarah L. Fortin, declare under penalty of perjury that on August 24, 2004, I mailed copies of the attached **Notice of Hearing and Motion for Summary Judgment, Affidavit, Memorandum, and Findings of Fact** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Jeffrey K. Rhoades  
Jenny L. Rhoades  
8033 Sheridan Avenue S  
Bloomington, MN 55431

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

James M. Kempainen  
8609 Lyndale Avenue South  
Bloomington, MN 55420

Executed on: August 24, 2004

/s/ Sarah L. Fortin  
Sarah L. Fortin, Legal Secretary  
Lapp, Libra, Thomson, Stoebner &  
Pusch, Chartered  
120 South Sixth Street, Suite 2500  
Minneapolis, MN 55402  
612/338-5815

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

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The above-entitled action came on for hearing before the Honorable Judge Robert J. Kressel on September 15, 2004, upon the motion of Plaintiff Julia A. Christians, Trustee, for summary judgment. Appearances, if any, were as noted in the record.

Based upon all the files, records, and proceedings herein, the Court being duly advised in the premises, the Court hereby makes the following:

**FINDINGS OF FACT**

1. After the date of the filing of their petition, Defendants received funds arising from their 2003 tax refunds. A portion of said refunds constitutes property of the bankruptcy estate, to the extent of \$1,793.34.
2. On May 19, 2004, upon the Trustee's objection to claimed exemptions, the Court entered an Order disallowing the Debtors' asserted exemptions in a discrimination claim and their Wells Fargo checking and savings account deposits.
3. As of the filing date, Debtors' funds on deposit consisted of the sum of \$204.00.

4. The Trustee made demand upon Defendants for turnover of the estate's share of the refunds amounting to \$1,793.34, the deposits amounting to \$204.00, copies of all pleadings and/or other documents related to the discrimination claim and any recovery from the claim, but Defendants failed and refused to comply with turnover.

5. On June 9, 2004, the Court entered an Order directing Debtors turn over to the Trustee within 7 days the sum of \$204.00, as and for funds on deposit in bank accounts as of the filing date, copies of all pleadings and/or other documents related to Debtor's pending discrimination claim against a former employer; any and all funds recovered by Debtors in connection with said claim; and, the sum of \$1,793.34 as and for the estate's portion of Debtors' tax refunds received after the filing.

6. Defendants have failed to obey the June 9, 2004 Order of this Court.

#### **CONCLUSIONS OF LAW**

1. Plaintiff's motion for summary judgment is hereby GRANTED in its entirety.
2. Grounds exist for revocation of the debtors' discharge under 11 U.S.C. §727.
3. Plaintiff is entitled to judgment against Defendants in the amount of \$1,997.34, plus costs and interest.

#### **ORDER FOR JUDGMENT**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered that judgment be entered in favor of the Plaintiff and against each Defendant, in the amount of \$1,997.34, plus costs of \$154.65, plus interest of \$10.29, for a total of \$2,162.28.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

**BY THE COURT:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert J. Kressel  
United States Bankruptcy Court Judge