

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

*In re: Michelle Renee Erickson,
AKA EDC GROUP LLC*

CHAPTER 7
BKY CASE NO. 03-46468

Debtor.

Terri A. Georgen, Trustee,

ADV. No. 04-4220

Plaintiff,

v.

Capital One,

Defendant(s).

NOTICE OF HEARING AND MOTION FOR DEFAULT JUDGMENT

TO: Entities specified in Local Rule 9013-3.

1. Terri A. Georgen-Running trustee (the "Trustee") of the bankruptcy estate of the above-named Debtor(s) moves the Court for the relief requested below and gives notice of hearing.

2. A hearing will be held on this motion by the Honorable Nancy C. Dreher, Courtroom No. 7 West, 7th Floor, 300 S 4th Street, Minneapolis, Minnesota on **November 3, 2004, at 10:30 a.m.**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be delivered and filed not later than October 29, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and legal holidays), or filed and served by mail not later than October 25, 2004, which is seven (7) days before the time set for the hearing (excluding

Saturdays, Sundays, and legal holidays). **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 matter pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005 and Local Rule 1070-1. This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(F).

5. This motion arises under 11 U.S.C. §547, FED. R. BANKR. P. 7055 and Local Rule 7055-1. This motion is filed under FED. R. BANKR. P. 9014 and Local Rules 9001-1 to 9001-6 and 9013-1 to 9013-5.

6. Trustee (“Plaintiff”), hereby requests that the Court enter judgment by default against Capital One (the “Defendant(s)”) on the following grounds:

7. The Plaintiff filed the above named complaint (“Complaint”) on August 9, 2004 under Fed. R. Bankr. P. 7001(4) to recover a preference payment by the Debtor(s) to the Defendant(s) within the meaning of 11 U.S.C. §547.

8. Upon information and belief, the Defendant(s) are residents of the state of Virginia, located at P.O. Box 85147 Richmond, VA 23276.

9. A Summons was issued on August 9, 2004, by the United States Bankruptcy Court for the District of Minnesota, directing the Defendant(s) to file an answer with the United States Bankruptcy Court within thirty (30) days pursuant to the Bankruptcy rules. *Exhibit A*. The Plaintiff mailed the Complaint and Summons to the Defendant(s) on August 9, 2004 via certified mail, return receipt requested. *Exhibit B*. The certificate of service was docketed on August 9, 2004. *Id.* The Defendant(s) signed the return receipts. *Id.*

10. An answer to the Plaintiff 's Complaint was due on approximately September 9, 2004. Fed. R. Bankr. P. 7012(a).

11. As of the date of the Motion, the Defendant(s) have not filed an answer to the Plaintiff's Complaint. *See Affidavit of Default.*

12. The Plaintiff made the following allegation in her Complaint:

- a. The Debtor(s) commenced the present bankruptcy case on 09/12/03.
- b. The Trustee is the duly appointed, qualified and acting Chapter 7 Trustee of the bankruptcy estate.
- c. On the following date(s) – July 11, 2003 (within 90 days of the filing of the petition for relief), the Debtor(s) paid the sum of Seven Sixty-Two Hundred and 75/100 Dollars (\$762.75) to Defendant(s) on account of an antecedent debt.
- d. The Transfers from the Debtor(s) to the Defendant(s) were made while the Debtor(s) were insolvent.
- e. The Transfers will enable the Defendant(s) to recover more than they would receive as a creditor under Chapter 7 of Title 11 of the United States Code, if the Transfers had not been made and the Defendant(s) received payment of such debt to the extent provided by Title 11 of the United States Code.
- f. S a result, the Transfers are avoidable pursuant to Section 547(b) of the United States Bankruptcy Code, with the Transfers preserved pursuant to 11 U.S.C. §551.

WHEREFORE, the Plaintiff requests that the Bankruptcy Court enter a default judgment avoiding the Transfers and ordering Defendant(s) to pay over to the Trustee the sum of Seven Hundred Sixty-Two and 75/100 (\$762.75), plus costs incurred.

Dated: October 4, 2004

***Georgen-Running Law Firm
A Professional Corporation***

/e/ Terri A. Georgen-Running
Terri A. Georgen-Running (#238338)
PO Box 16355
St. Paul, MN 55116
651-699-6980
651-292-1234 *facsimile*

**ATTORNEYS FOR THE
TRUSTEE/PLAINTIFF**

VERIFICATION. I, Terri A. Georgen-Running, state that I am the Plaintiff in the above-referenced action, that I have read the Application for Default Judgment, and declare under penalty of perjury that the contents thereof are true and correct according to the best of my knowledge, information and belief.

Dated: October 4, 2004

/e/ Terri A. Georgen-Running
Terri A. Georgen-Running,
Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

<p>In re: MICHELLE RENEE ERICKSON Debtor TERRI A GEORGEN-RUNNING Plaintiff</p> <p style="text-align:center">v. ATTN OFFICER MANAGING AGENT CAPITAL ONE Defendant</p>	<p>Summons</p> <p>Adv 04-4220</p> <p>Bky 3-46468</p>
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To the Defendant named above:

You are hereby summoned and required to serve upon the attorney for the plaintiff(s), whose name and address is subscribed to the annexed complaint, an answer under Bankruptcy Rule 7012 to the complaint which is herewith served upon you, within thirty (30) days after the date this summons was issued, and to forthwith file the answer with the clerk of this court. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Witness my Official Signature
and the seal of said court at
Minneapolis in said District

/e/ Lori Vosejпка Acting Clerk
Clerk of Bankruptcy Court

at: Mon Aug 9 15:40:21 2004

United States Bankruptcy Court
301 U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415



NOTE --The summons with complaint annexed is to be served within 10 days after the date issued under Bankruptcy Rule 7004(e). If the debtor is a defendant and represented by an attorney, the debtor and the attorney are each served separately under Rule 7004(b). Pursuant to Bankruptcy Rule 7004(b)(3), if the defendant is a corporation, partnership or other unincorporated association, a copy of the summons and complaint shall be served to the the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

7003 1010 0002 0723 0736

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42

Postmark
Here

Sent To
 Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

Capital One
 P.O. Box 85147
 Richmond VA 23276

PS Form 3800, June 2002 See Reverse for Instructions

Terri A. Georgen, Esq.
P.O. Box 16355
St. Paul, MN 55116

COMPLETE THIS SECTION ON DELIVERY

Agent
 Addressee

C. Date of Delivery

A. Signature
X

B. Received by (Printed Name)
Capital One

D. Is delivery address different from item 1?
 Yes
 No

E. If delivery address different, address below:
AUG 12 2004 AUG 13 2004

MAIL OPERATIONS

3. Service Type
 Certified Mail
 Registered
 Insured Mail
 Express Mail
 Return Receipt for Merchandise
 C.O.D.
 Yes
 No

4. Restricted Delivery (Extra Fee) Yes

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Domestic Return Receipt

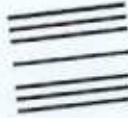
2. Article Number
(transfer from service label)

PS Form 3811, August 2001

\$4.42

AUG 09 2004
US POSTAGE
FIRST-CLASS MAIL
MAILED FROM 55107

stamps.com



STAMPS.COM

7003 1010 0002 0723 0736



Capital One
ATTN: Officer of Managing Agent
PO Box 85147
Richmond VA 23276-0001



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Michelle Renee Erickson
AKA EDC Group LLC

CHAPTER 7
BKY CASE NO. 03-46468

Debtor.

Terri A. Georgen, Trustee,

ADV. No. 04-4220

Plaintiff,

v.

Capital One,

Defendant(s).

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Terri A. Georgen-Running, declare that on the date indicated below, I served the following:

- (1) Notice of Hearing and Motion for Default Judgment; (2) Affidavit of Default; (3) Affidavit on Merits and Amount Due; (4) Unsworn Declaration for Proof of Service; and (5) Findings of Fact, Conclusions of Law and Order for Judgment.

Upon each of the entities named below, by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail, postage prepaid, and depositing same in the post office at St. Paul, Minnesota addressed to each of them as follows:

United States Trustee
1015 U.S. Courthouse
300 S. 4th St.
Minneapolis, MN 55415

Capital One
ATTN: Officer or Managing Agent
P.O. Box 85147
Richmond, VA 23276-0001

Michelle Renee Erickson
EDC Group LLC
3579 75th Ave.
Princeton, MN 55371

William P. Kain, Esq.
Schmidt & Lund
13 S. 7th Ave.
St. Cloud, MN 56301

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

Dated: October 4, 2004

/e/ Terri A. Georgen-Running

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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CHAPTER 7
BKY CASE NO. 03-46468

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Capital One,

Defendant(s).

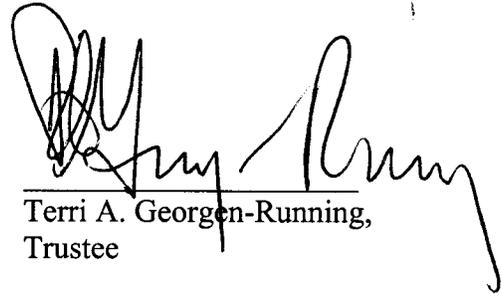
AFFIDAVIT OF DEFAULT

I, Terri A. Georgen-Running, Chapter 7 Trustee, being duly sworn and under oath, state that:

1. I am the duly appointed Chapter 7 Trustee for the above referenced bankruptcy case.
2. I am the attorney of record in the above-entitled adversary proceeding.
3. On August 9, 2004, I served the Summons and Complaint on the Defendant(s) by first class mail, return receipt requested. I filed the proof of service with the Court on August 9, 2004. Exhibit B.
4. More than 30 days since the date of the summons has lapsed and the Defendant has not filed or served an answer.

This concludes my Affidavit.

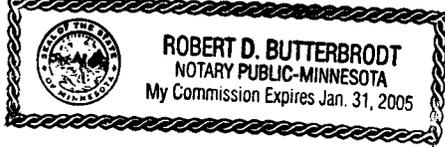
Dated: September 30, 2004


Terri A. Georgen-Running,
Trustee

Subscribed and sworn to before me
this 30th day of September, 2004.



Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

*In re: Michelle Renee Erickson
AKA EDC GROUP LLC*

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BKY CASE NO. 03-46468

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Terri A. Georgen, Trustee,

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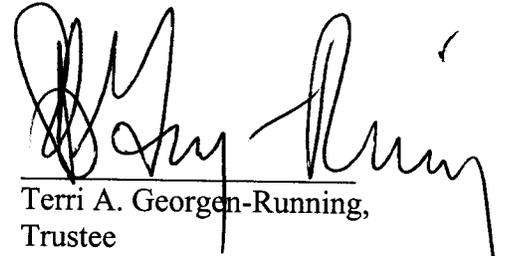
AFFIDAVIT OF IDENTIFICATION

I, Terri A. Georgen-Running, Trustee, being duly sworn and under oath, state that:

1. I am the duly appointed Chapter 7 Trustee in the above referenced bankruptcy case.
2. I am the attorney of record in the above-entitled adversary proceeding.
3. To the best of my knowledge, information, and belief, the name and address of the Defendant(s) in the above-entitled matter is. Capital One, P.O. Box 85147, Richmond, VA 23276. *Exhibit D.*
4. To the best of my knowledge information and belief, the Defendant(s) are not infants, not employed by a military organization, and not incompetent.

This concludes my Affidavit.

Dated: September 30, 2004

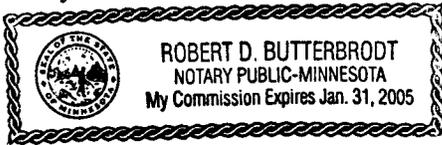


Terri A. Georgen-Running,
Trustee

Subscribed and sworn to before me
this 30th day of September, 2004.



Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Michelle Renee Erickson
AKA EDC GROUP LLC

CHAPTER 7
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Debtor.

Terri A. Georgen, Trustee,

ADV. No. 04-4220

Plaintiff,

v.

Capital One,

Defendant(s).

AFFIDAVIT ON MERITS AND AMOUNT DUE

I, Terri A. Georgen-Running, Trustee, being duly sworn under oath, state that:

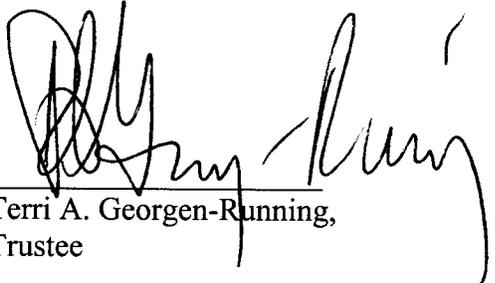
1. I am the attorney of record in the above-entitled adversary proceeding.
2. A monetary judgment has been requested in this adversarial proceeding.
3. The Chapter 7 Trustee has a legal basis upon which to request such relief pursuant to the authority of 11 U.S.C. § 727 (d)(3).
4. Said relief is supported by the following facts:
 - a. The Debtors commenced the present Bankruptcy Case on 09/12/03.
 - b. A discharge was granted on 12/29/03.
 - g. On the following date(s) – July 11, 2003 (within 90 days of the filing of the petition for relief), the Debtor(s) paid the sum of

Seven Hundred Sixty-Two and 75/100 Dollars (\$762.75) to Defendant(s) on account of an antecedent debt.

- h. The Transfers from the Debtor(s) to the Defendant(s) were made while the Debtor(s) were insolvent.
- i. The Transfers will enable the Defendant(s) to recover more than they would receive as a creditor under Chapter 7 of Title 11 of the United States Code, if the Transfers had not been made and the Defendant(s) received payment of such debt to the extent provided by Title 11 of the United States Code.
- c. As a result, the Transfers are avoidable pursuant to Section 547(b) of the United States Bankruptcy Code, with the Transfers preserved pursuant to 11 U.S.C. §551.

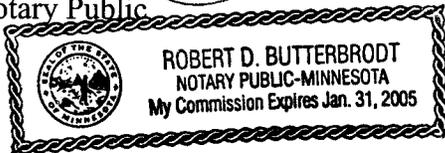
This concludes my Affidavit.

Dated: September 30, 2004


Terri A. Georgen-Running,
Trustee

Subscribed and sworn to before me
this 30th day of September, 2004.


Notary Public



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Terri A. Georgen, Trustee,

ADV. No. 04-4220

Plaintiff,

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Capital One,

Defendant(s).

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

At Minneapolis, Minnesota on this _____ day of _____, 2004, the 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 came before the undersigned.

Findings of Fact

1. The Debtor(s) Michelle Renee Erickson commenced the present Bankruptcy Case (03-46468) on 09/12/03.
2. The Trustee is the duly appointed, qualified and acting Chapter 7 Trustee of the bankruptcy estate.

3. On the following date(s) – July 11, 2003 (within 90 days of the filing of the petition for relief), the Debtor(s) paid the sum of Seven Hundred Sixty-Two and 75/100 Dollars (\$762.75) to Defendant(s) on account of an antecedent debt.

4. The Transfers from the Debtor(s) to the Defendant(s) were made while the Debtor(s) were insolvent.

5. The Transfers will enable the Defendant(s) to recover more than they would receive as a creditor under Chapter 7 of Title 11 of the United States Code, if the Transfers had not been made and the Defendant(s) received payment of such debt to the extent provided by Title 11 of the United States Code.

Conclusions of Law

The Transfers are avoidable pursuant to Section 547(b) of the United States Bankruptcy Code, with the Transfers preserved pursuant to 11 U.S.C. §551.

Order for Judgment

IT IS HEREBY ORDERED:

1. The Transfers are voided pursuant to 11 U.S.C. §547; and
2. Defendant(s) are ordered to pay over to the Trustee the sum of Seven Hundred Sixty-Two and 75/100 (\$762.75), plus costs incurred.

LET JUDGMENT BE ENTERED ACCORDINGLY.

The Honorable Nancy C. Dreher
Chief United States Bankruptcy Judge