

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

CHAPTER 7 CASE

Barbara E. King Gohl,

Debtor.

BKY Case No. 04-43134 NCD

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David Gohl,

ADV. No.: 04-4246

Plaintiff,

vs.

Barbara E. King Gohl,

Defendant

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**NOTICE OF HEARING AND MOTION TO DISMISS COMPLAINT**

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TO: The parties as specified in Local Rule 9013-3(a).

1. Barbara E. King Gohl (hereinafter "Debtor"), by her undersigned attorneys, moves the Court for the relief requested below and give notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 29, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Nancy C. Dreher, in Courtroom 7W of the above entitled Court located at U.S. Courthouse, 300 South Fourth St., Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 22, 2004 which is seven days before the time set for the hearing (including Saturdays, Sundays and Holidays) or served and filed by mail not later than September 17, 2004, which is ten days before the time set for the hearing (including Saturdays, Sundays and 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 motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on June 3, 2004. The case is now pending in this Court.

5. This motion arises under and Federal Rules of Bankruptcy Procedure 7012. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests the Court to enter an Order dismissing the complaint filed by Daid Gohl ("Gohl") for failure to state a claim.

6. Gohl has filed a Complaint to Determine Dischargeability of Debt, a copy of which is attached hereto as Exhibit A ("Complaint"). Regarding the claim of nondischargeability, the Complaint only provides as follows:

The debts owed to [Gohl] by debtor pursuant to her indemnity obligations set forth in the Scott County Judgment and Decree are nondischargeable under 11 U.S.C. § 523(a)(15) as they are within the purview of the discharge exception for debts incurred by the debtor in connection with a divorce decree and are not alimony, maintenance or support.

See Complaint at ¶ 14.

7. Gohl's Complaint is conclusory at best and states no facts that can support a finding of nondischargeability.

8. Because Gohl has failed to state facts sufficient to state a claim as a matter of law and is merely conclusory in his allegations, his complaint should be dismissed.

WHEREFORE, Movants, by their undersigned attorney, move the Court for an order as provided herein and for such other relief as may be just and equitable.

**MANSFIELD, TANICK & COHEN, P.A.**

Dated: September 2, 2004

By: /e/ Jamie R. Pierce  
Thomas G. Wallrich (213354)  
Jamie R. Pierce (305054)  
1700 Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402-4511  
Tel: (612) 339-4295

**ATTORNEYS FOR DEFENDANT**

VERIFICATION

I, Jamie R. Pierce, attorney for the Debtor named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing Exhibit A is a true and correct copy of David Gohl's Complaint according to the best of my knowledge, information and belief.

Dated: September 2, 2004

/e/ Jamie R. Pierce  
Jamie R. Pierce

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Barbara E. King Gohl

Case No. 04-43134

Chapter 7

Debtor.

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David Gohl,

Plaintiff,

Adv. No. \_\_\_\_\_

vs.

COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT

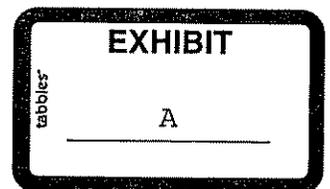
Barbara E. King Gohl,

Defendant.

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David Gohl, plaintiff, states the following:

1. Plaintiff is a resident of the State of Minnesota and the former spouse of Debtor Barbara King Gohl.
2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(a) and 1334, and Local Rule 1070-1.
3. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(1).
4. Debtor and Plaintiff were divorced pursuant to a Judgment and Decree entered on April 30, 2002 in Scott County, Minnesota, District Court File No. 2001-775. At the time of the divorce, Debtor owned and operated a business called Secure Products Distributing, Inc., d/b/a



Video Securities Distributing (“Secure Products”). During the marriage, Plaintiff had personally guaranteed certain of Secure Products debts and obligations.

5. Paragraph 10 of the Scott County Judgment and Decree provides, in part:

[Debtor] is hereby awarded all right, title, interest and equity in and to the business known as Secured Products Distributing, Inc., d/b/a Video Securities Distributing, a Minnesota corporation. [Debtor] shall indemnify and hold [Plaintiff] harmless from any liability or obligation whatsoever regarding said business.

6. The Scott County Court reserved jurisdiction to redistribute property for any losses incurred by one or the other party resulting from any default on payments or obligations outlined in the decree.

7. Secure Products and Debtor failed to pay the debts and obligations of Secure Products. In 2003, Plaintiff was sued individually by two separate creditors of Secure Products due to the personal guarantees he had executed on behalf of Secure Products.

8. Telex Communications, Inc. (“Telex”), a creditor of Secure Products, entered judgment against Plaintiff individually in the amount of \$11,811.11. Plaintiff settled with Telex by paying the sum of \$7,000 as and for full and final payment and the judgment has been satisfied in full.

9. Associated Bank Minnesota, NA (“Associated Bank”), another creditor of Secure Products, commenced suit against Plaintiff and Debtor individually to recover for defaults in the obligations of Secure Products. The action is entitled Associated Bank Minnesota, N.A. vs. Secure Products Distributing, Inc, David Gohl and Barbara Gohl, Hennepin County District Court No. CT-03-18449.

10. Plaintiff had personally guaranteed two loans that Secure Products had borrowed from Associated Bank. As of March 12, 2004, Associated Bank claimed it was owed the sum

of \$26,693.82 plus per diem interest of \$4.74756 from March 12, 2004 on one loan and the sum of \$35,165.18 plus per diem interest of \$5.97352 from March 12, 2004 on the other loan, together with attorneys' fees and collection costs. Associated Bank also had a claim against Debtor for conversion. Associated Bank's claims against Debtor are subject to the automatic stay provisions of 11 U.S.C. §362(a).

11. By Order dated May 26, 2004, the Hennepin County District Court judgment was entered against Debtor and in favor of Plaintiff for any sums found owing to Associated Bank from Plaintiff. Judgment was also entered in favor of Plaintiff and against Debtor in the amount of \$6,126.20 as and for attorneys fees and costs incurred in connection with the proceeding.
12. Following motion by Plaintiff, the Scott County District Court, the Honorable William E. Macklin presiding, ordered payment into court of the proceeds from the sale of the debtor's home to insure payment of Secure Products' debts.
13. By Order dated August 18, 2004, the Bankruptcy Court avoided the judicial lien created by the Scott County District Court.
14. The debts owed to Plaintiff by debtor pursuant to her indemnity obligations set forth in the Scott County Judgment and Decree are nondischargeable under 11 U.S.C. § 523(a)(15) as they are within the purview of the discharge exception for debts incurred by the debtor in connection with a divorce decree and are not for alimony, maintenance or support.

Wherefore, Plaintiff prays that this Court determine that the debts owed to him by Debtor which were incurred in connection with the property settlement provisions of the divorce decree entered by the Scott County District Court be excepted from discharge in this bankruptcy proceeding.

Respectfully Submitted:

Dated: August 30, 2004

**SANDRA K. KENSY**

  
Sandra K. Kensy, # 225198  
Attorney for David G. Gohl  
5430 Carlson Rd  
St. Paul, MN 55126  
(651) 494-9463

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

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Barbara E. King Gohl (hereinafter "Debtor") submits this Memorandum in Support of her Motion to Dismiss.

**FACTS**

Debtor refers to the facts stated in her Notice of Hearing and Motion to Dismiss and incorporates the same herein.

**ARGUMENT**

Gohl's Complaint only provides a conclusory legal allegation, not factual, that the Debtor's debt to him is nondischargeable. Because Gohl has failed to provide a single *fact* that can allow this Court to find a stated claim for relief, his Complaint should be dismissed.

This motion is brought under Federal Rule of Bankruptcy Procedure 7012, which incorporates Rule 12(b)(6) of the Federal Rules of Civil Procedure, for dismissal of the Complaint for failure to state a claim upon which relief can be granted. In analyzing dismissal under Rule 12(b)(6), the factual allegations contained in the complaint are accepted as true and construed in the light most favorable to the plaintiff. Springdale Educ. Ass'n v. Springdale Sch. Dist., 133 F.3d 649, 651 (8<sup>th</sup> Cir. 1998). At a minimum, a complaint must contain facts sufficient to state a claim as a matter of law and must not be merely conclusory in its allegations. Id.

Gohl's Complaint is brought pursuant to 11 U.S.C. § 523(a)(15), which provides as follows:

Sec. 523. - Exceptions to discharge

(a)

A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

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(15)

not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit **unless** -

(A)

the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B)

discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor[.]

11 U.S.C. § 523(a)(15)(emphasis added). Gohl fails to allege, even in a conclusory manner, any facts that can support a finding in his favor under 11 U.S.C. § 523(a)(15)(A) or (B). Accordingly, his Complaint should be dismissed.

**CONCLUSION**

The Debtor respectfully requests that the Court grant her Motion and enter the attached Order.

Dated: September 2, 2004

**MANSFIELD, TANICK & COHEN, P.A.**

By: /e/ Jamie R. Pierce

Thomas G. Wallrich (213354)  
Jamie R. Pierce (305054)  
1700 Pillsbury Center South  
220 South Sixth Street  
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**ATTORNEYS FOR DEFENDANT**

UNITED STATES DISTRICT COURT  
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**PROOF OF SERVICE**

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Amy E. Kulbeik states that she is an employee of Mansfield Tanick & Cohen, P.A., and in the course of said employment, on the date indicated below, she served the following:

- Notice of Hearing and Motion to Dismiss Complaint;
- Memorandum in Support of Motion to Dismiss; and
- Order Granting Motion to Dismiss.

on the parties on the attached service list by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail; and that she certifies the foregoing under penalty of perjury.

Dated: September 2, 2004

  
\_\_\_\_\_  
Amy E. Kulbeik

SERVICE LIST

Barbara E. King Gohl  
902 Forest Lac Court  
St. Louis, MO 63141

Thomas G. Wallrich  
Jamie R. Pierce  
Mansfield, Tanick & Cohen, P.A.  
220 South Sixth Street  
1700 Pillsbury Center South  
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Timothy D. Moratzka  
901 Marquette Avenue  
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Minneapolis, MN 55402

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

David Gohl  
234 Mound Street  
Shakopee, MN 55379

Sandra K. Kensey  
5430 Carlson Road  
Shoreview, MN 55126

#357199 1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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**ORDER GRANTING MOTION TO DISMISS**

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The above entitled matter came on for hearing upon the motion of Barbara E. King Gohl (hereinafter "Debtor"), pursuant to Federal Rule of Bankruptcy Procedure 7012 on September 29, 2004, at U.S. Courthouse, 300 South Fourth St., Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED:

1. Debtor's Motion to Dismiss is granted.
2. David Gohl's Complaint to Determine Dischargeability of Debt is hereby dismissed.

Dated: \_\_\_\_\_, 2004

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Nancy D. Dreher  
Judge of Bankruptcy Court