

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

David Michael Krmpotich,
Debtor

Case No. 04-43706

Chapter 7

Adv. Proc. No. _____

First Minnetonka City Bank,

Plaintiff,

v.

David Michael Krmpotich, Defendant/Debtor
And Michael David Krmpotich, Defendant.

COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

To: Debtor, David Michael Krmpotich, and his attorney, Mark A. Carter, 810 South 1st Street Suite 100, Hopkins MN 55343 and Michael David Krmpotich 2900 Thomas Avenue South, Minneapolis MN 55416.

Plaintiff for its complaint against the Debtor and Defendant, Michael David Krmpotich, states and alleges as follows:

JURISDICTION

1. On July 2, 2004, Defendant/Debtor, David Michael Krmpotich, filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.
2. The Court has jurisdiction pursuant to Section 1334 Title 28 U.S.C. and Bankruptcy Code Rule 7001.
3. Venue for this action is appropriate pursuant to Section 1409 of Title 28 of the United States Bankruptcy Code.
4. This adversarial proceeding arises under Section 547, 548 and 550 of the United States Bankruptcy Code. This is a core proceeding pursuant to Section 157 of

Title 28 of the United States Code. This complaint is filed under Bankruptcy Rule 7001 and local Rule 901.

FACTUAL ALLEGATIONS

1. That the Plaintiff, First Minnetonka City Bank, (hereinafter First Minnetonka) is a bank organized under the laws of the State of Minnesota with its primary offices located at 14550 Excelsior Boulevard, in the City of Minnetonka, County of Hennepin, State of Minnesota.
2. That the Defendant/Debtor, David Michael Krmpotich, (hereinafter the Defendant/Debtor) at all times pertinent hereto has and continues to reside at 15 16th Avenue North in the City of Hopkins, County of Hennepin, State of Minnesota.
3. That the Defendant, Michael David Krmpotich, lives at 2900 Thomas Avenue South, Minneapolis MN 55416 and is the father of the Defendant/Debtor.
4. That the Defendant/Debtor had a long standing banking relationship with the Plaintiff, entering into several loan arrangements over a number of years with the Plaintiff bank secured by property owned by the Defendant/Debtor.
5. That the long standing relationship involved the ongoing purchase and resale of various automobiles, motor cycles and other means of motorized transportation, where the Plaintiff provided the financing to the Defendant/Debtor for the purchase of said items of personal property and the Defendant/Debtor in turn provided a security interest in said property to secure repayment of said loans.
6. That a practice developed where the Defendant/Debtor would ask for a release of said property so that he could finalize the sale of said property and in turn the proceeds from the sale of one such property would be used to purchase a replacement vehicle with the Plaintiff then receiving a secured lien in the replacement vehicle.
7. That the Defendant/Debtor during said practice repeatedly orally represented that if the Plaintiff bank released the lien it held on the property to be sold by the Defendant/Debtor the Defendant/Debtor would make certain the Plaintiff would receive a lien on the replacement property purchased.
8. That this practice resulted in a series of successful secured liens being granted to the Plaintiff in successive replacement properties.
9. That in June of 2004 the Defendant/Debtor, David Michael Krmpotich, specifically asked an officer of the Plaintiff for a lien release relative to the following described property:

2002 Jeep Wrangler Serial # 1J4FA49S22P730712

10. That said lien secured the repayment of that certain promissory note from Defendant/Debtor as borrower dated December 31, 2002, in the original amount of \$59,091.15, which currently has an outstanding balance of \$38,180.97.
11. That at said time of the request for the release of lien; the Defendant/Debtor informed the officer that the Defendant/Debtor was purchasing a replacement vehicle, which was a 2004 Harley Davidson Motorcycle vehicle identification number 1HD1BMY104Y064631.
12. That the Defendant/Debtor at said time specifically represented that in consideration for the release of said lien the Plaintiff would receive a first secured position as a lien against the Harley Davidson.
13. That as further assurance that the Harley Davidson would be purchased and a lien provided, the Defendant as had been his pattern in prior transactions supplied a copy of the purchase agreement relative to the purchase of said Harley Davidson.
14. That in reliance upon said promise and representation the Plaintiff released its lien in the Jeep.
15. That the proceeds from the sale of the Jeep, which totaled \$17,100.00, were in fact used by the Defendant/Debtor to purchase the Harley.
16. That the Defendant/Debtor, David Michael Krmpotich, knowingly and fraudulently represented that said security interest would be provided, when in fact a security interest in the Harley was never provided to Plaintiff.
17. The Defendant/Debtor fraudulently and intentionally failed to give to the Plaintiff a first secured position in said Harley Davidson.
18. That within approximately one month following the purchase of said Harley Davidson the Defendant/Debtor sold said motorcycle and gave as a gift the proceeds to his father, defendant Michael David Krmpotich.
19. That at the first meeting of the creditors the Defendant/Debtor testified that he sold the Harley Davidson for approximately \$15,500 and gave all of the proceeds of such sale to his father.
20. That no consideration was given for the receipt of said proceeds by the Defendant's father.
21. That the Plaintiff is entitled to trace and retain its security interest in the Jeep, through to the Jeep sale proceeds, through the Harley Davidson and into the hands of the Defendant, Michael David Krmpotich.

22. That the Plaintiff is entitled under the UCC to a security interest in and the receipt of the proceeds from the sale of said Harley Davidson said proceeds representing the security interest held by the Plaintiff in the Jeep and which can be directly traced.
23. That based on information and belief the Defendants conspired together to deprive the Plaintiff of its security interest in said Jeep and the proceeds from the sale of the same.
24. That as a result of the fraudulent and deceptive practices of the Defendants the Plaintiff has been deprived of its security interest in the Jeep and as a result should be and is entitled to the proceeds from the sale of the Harley Davidson.

Second Cause of Action as to Defendant/Debtor

25. Reiterate and Reallege paragraphs 1-21 above.
26. That in December 2001 Defendant/Debtor provided to Plaintiff a security interest under a UCC financing statement, filed with the Secretary of State of Minnesota as filing number 20012509837 dated 12/18/2001 in a certain 1998 Ski Doo snowmobile MXZX440 S/M #127000160.
27. That said security interest secured the repayment of a loan as noted in paragraph 10 above..
28. That the Defendant/Debtor wrongfully and with the intend of defrauding the security interest of the Plaintiff transferred and sold the 1998 Ski Doo.
29. That the value of said 1998 Ski Doo is \$3,000.00.
30. That the Plaintiff continues to hold a valid security interest in said 1998 Ski Doo, but has been unable to obtain possession of the same or receive payment of what is owing under the loan securing the same.
31. That as a result of said fraud the Plaintiff has been harmed to the extend and value of said 1998 Ski Doo.

Third Cause of Action as to Defendant/Debtor

32. Reiterate and Reallege paragraphs 1-27 above.
33. That on February 27, 2004 Plaintiff made a loan to the Defendant/Debtor in the amount of \$7,025.00.
34. That said loan was secured by a first secured position in a certain 2002 Suzuki Motorcycle identified by vehicle indentification number JS1GT74A622107153.
35. That in June of 2004 the Defendant/Debtor, David Michael Krmpotich, specifically asked Kevin VonBank an officer of the Plaintiff for a lien release relative to said 2002 Suzuki.

36. That at said time of the request for the release of lien, the Defendant/Debtor informed Kevin VonBank that the Defendant/Debtor was selling said Suzuki and that the proceed from the sale would be brought back immediately to the Plaintiff bank to be applied against said loan.
37. That in reliance upon said promise and representation the Plaintiff released its lien in the Suzuki.
38. That the proceeds from the sale of the Suzuki, which totaled \$7,000.00, were in fact fraudulently kept by the Defendant/Debtor and not paid to the Plaintiff.
39. That the Defendant/Debtor, David Michael Krmpotich, knowingly and fraudulently represented that he would act as agent for the Bank and that the proceeds would be delivered directly to the Plaintiff in fulfillment of his obligations on said loan.

Wherefore, Plaintiff demands the following order for relief:

- A. A finding that there is owed to the Plaintiff from the Defendant/Debtor the sum of \$27,100.00 representing the value of the 3 items of security lost due to the fraudulent conduct of the Defendant/Debtor. (\$17,100.00 for the Jeep, \$3,000.00 for the Ski Doo and \$7,000.00 for the Suzuki).
- B. A finding that the Plaintiff is entitled to a security interest in and a right to trace through the proceeds from the sale of the Jeep to the gift made to the Defendant Michael David Krmpotich.
- C. Joint and Several Judgment against both the Defendant/Debtor and the Defendant in the amount of the proceeds from the sale of the Harley Davidson, \$15,500.00.
- D. Judgment against the Defendant/Debtor alone in the amount of \$11,600.00 representing the rest of the value of the 3 items of secured property lost due to the Fraud of said Defendant/Debtor.
- E. A finding that the claim and judgment as to the Defendant/Debtor for the \$27,100.00 is a claim based on fraud and that said obligation is not discharged by the bankruptcy.
- F. For such other and further relief as the Court may deem appropriate.

