

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

**In re:
Ronda Smith,**

Debtor.

Bky Case No.: 04-60377

Chapter 7

**Bank One Delaware, NA f.k.a. First USA,
Plaintiff,**

Adv. Pro. No. _____

vs.

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT**

Ronda Smith,

Defendant.

**Bank One Delaware, NA f.k.a. First USA, by and through its counsel David
Hoiland, hereby represents as follows:**

- 1. The Court has jurisdiction to hear this complaint pursuant to 28 U.S.C. 157(a), (b)(1), (b)(2)(I) (core proceeding), 1334(b), and 11 U.S.C. 523(c).**
- 2. On 03/30/2004, Defendant filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.**
- 3. Plaintiff is the holder of an unsecured claim against Defendant arising from credit card account number 4366133037847042.**
- 4. It appears that the Defendant used convenience checks totaling \$49,075.00 from 10/17/2003 to 12/19/2003 and made payments of \$1,517.00 resulting in a net advance of \$47,558.00**
- 5. By the date the bankruptcy was filed, Defendants owed \$50,867.44 on this**

account.

- 6. Use of a credit card account constitutes an implied promise that the Defendants have the intention and ability to repay.**
- 7. Plaintiff relied upon Defendant express and implied representation of present intent and ability to repay.**
- 8. Accordingly, Plaintiff is entitled to judgment that this debt is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A).**
- 9. The Cardholder Agreement in effect between the parties requires Defendant to pay costs of collection, including reasonable attorney fees.**

WHEREFORE, Bank One Delaware, NA f.k.a. First USA, prays for judgment as follows:

- A. For money judgment against Defendant jointly and severally in the amount \$47,558.00 as of 0;**
- B. That the Court except from discharge its claim against Defendants in the amount of \$47,558.00 plus interest, finance charges and attorney fees in accordance with the Cardholder Agreement of the parties; and**
- C. That the Court order such other such relief as it may deem appropriate.**

Respectfully submitted,

/e/David Jon Hoiland
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