UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Bky No. 04-60106 DDO

In Re:

Daniel S. Miller,

Debtor.

Daniel S. Miller,

Plaintiff,

Adv. No. _____

vs.

Richard Nikle,

Defendant.

**ADVERSARY COMPLAINT**

Plaintiff Daniel S. Miller ("Debtor" or "Plaintiff"), as and for his Complaint against Defendant Richard Nikle ("Defendant"), states and alleges as follows:

1. This adversary proceeding is a core proceeding under 28 U.S.C. § 157.

2. This Complaint is brought under Bankruptcy Rule 7001, and this action arises under 11 U.S. C. § § 502 and 547 and other applicable law. This Court has jurisdiction over this adversary proceeding. This adversary proceeding is authorized under 28 U.S.C. § § 157 and 1334, Bankruptcy Rule 7001 and Local Rule 1070-1.

3. Upon information and belief, the Defendant is a business entity or individual, as the case may be, with a place of business/residence located at 19041 380th Ave. SW, East Grand Forks, MN 56721-9221.

4. On February 3, 2004, an involuntary Chapter 7 petition was filed against the Debtor (the "Petition Date").

5. Plaintiff has made a written demand for payment to the Defendant, which demand remains unsatisfied.

**FIRST CAUSE OF ACTION**
**(Avoidance of Preferential Transfer Pursuant to 11 U.S.C. § 547)**

6. Within 90 days of the Petition Date, the Debtor transferred an interest in property to the Defendant in the total amount of $990.00 (collectively, the "Transfer").

7. Detail regarding the Transfer is set forth in the attached Exhibit A which is incorporated herein by reference. Plaintiff reserves the right to include within the Transfer any and all other pre-petition transfers which may be avoidable by Plaintiff under applicable law as may be disclosed upon further investigation.

8. At all times material herein, Defendant was a creditor of the Debtor.

9. The Transfer was made to or for the benefit of the Defendant.

10. The Transfer was made for, or on account of, an antecedent debt owed by the Debtor before such transfer was made.

11. The Transfer was made on or within 90 days before the Petition Date.

12. The Transfer was made while the Debtor was insolvent.

13. The Transfer enabled the Defendant to receive more than it would receive if:

(a) the case were a case under Chapter 7 of the United States Bankruptcy Code;

(b) the Transfer had not been made; and

(c) the Defendant received payment on the debt it was owed to the extent provided by the Bankruptcy Code.

14. The Transfer to the Defendant is avoidable pursuant to 11 U.S.C. § 547.

## SECOND CAUSE OF ACTION
## (Recovery of Preferential Transfer Pursuant to 11 U.S.C. § 550)

15. Defendant is the initial transferee of the Transfer.

16. Alternatively, if Defendant is not the initial transferee of the Transfer, Defendant is the immediate or mediate transferee of the initial transferor.

17. By reason of the foregoing, the Plaintiff is entitled to recover the Transfer pursuant to § 550 of the Bankruptcy Code.

## THIRD CAUSE OF ACTION
## (Disallowance of Claim Pursuant to 11 U.S.C. § 502(d)

18. Pursuant to 11 U.S.C. § 502(d), any claim asserted by Defendant shall be disallowed unless Defendant first pays the amount for which it is liable under 11 U.S.C. § 550(a).

19. Plaintiff is entitled to avoid and recover the Transfer or the value of the Transfer as a preference pursuant to Sections 547 and 550 of the Bankruptcy Code.

20. Accordingly, Plaintiff is entitled to recover from Defendant $990.00 together with interest, Plaintiff's costs and disbursements, and such attorneys fees and other expenses as may be allowed.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter an Order:

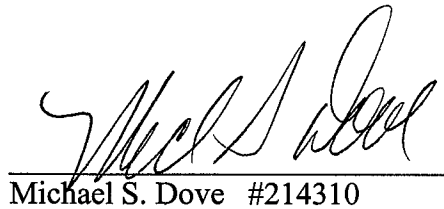
A. Avoiding the Transfer described in this Complaint;

B. Entering judgment in favor of Plaintiff and against Defendant, in the amount of $990.00, plus interest from the date of each payment, Plaintiff's costs and disbursements and such attorneys fees and other expenses as the Court may allow;

C. Disallowing any claim of the Defendant until the judgment is paid in full; and

D. Granting Plaintiff such other relief as this Court deems just and proper.

Dated this 6th day of August, 2004.



Michael S. Dove #214310
Ryan R. Dreyer #0332252
GISLASON & HUNTER LLP
Attorneys for Debtor/Plaintiff
2700 South Broadway
P. O. Box 458
New Ulm, MN 56073-0458
Phone: 507-354-3111

NULIB:181603.1

| Entity | Check No. | Date Issued | Date Cleared | | Amount |
|---|---|---|---|---|---|
| Nikle, Richard | 22688 | 11/17/2003 | 11/20/2003 | $ | 150.00 |
| Nikle, Richard | 22942 | 12/12/2003 | 12/16/2003 | $ | 570.00 |
| Nikle, Richard | 23010 | 12/19/2003 | 12/26/2003 | $ | 270.00 |

EXHIBIT A

22942

**DANIELSON GRAIN**
P.O. BOX 421
EAST GRAND FORKS, MN 56721
(218) 773-6854

American Federal Bank
140 Gateway Drive NE
East Grand Forks, MN 56721
Toll Free 877-773-9711
www.americanfederalbank.com

75-7100-2912

DATE December 12, 2003

PAY Five-Hundred Seventy and no/100 ---------- DOLLARS $570.00

TO THE ORDER OF Richard Nikle

Daniel S Miller MP

Details on back. Security Features Included.

⑈022942⑈ ⑆291271004⑆ 8000615260⑈ ⑈0000057000⑈

23010

**DANIELSON GRAIN**
P.O. BOX 421
EAST GRAND FORKS, MN 56721
(218) 773-6854

American Federal Bank
140 Gateway Drive NE
East Grand Forks, MN 56721
Toll Free 877-773-9711
www.americanfederalbank.com

75-7100-2912

DATE December 19, 2003

PAY Two-Hundred Seventy and no/100 ---------- DOLLARS $270.00

TO THE ORDER OF Richard Nikle

Daniel S Miller MP

Details on back. Security Features Included.

⑈023010⑈ ⑆291271004⑆ 8000615260⑈ ⑈0000027000⑈

22688

**DANIELSON GRAIN**
P.O. BOX 421
EAST GRAND FORKS, MN 56721
(218) 773-6854

American Federal Bank
140 Gateway Drive NE
East Grand Forks, MN 56721
Toll Free 877-773-9711
www.americanfederalbank.com

75-7100-2912

DATE November 17, 2003

PAY One-Hundred Fifty and no/100 ---------- DOLLARS $150.00

TO THE ORDER OF Richard Nikle

Daniel S Miller MP

Details on back. Security Features Included.

⑈022688⑈ ⑆291271004⑆ 8000615260⑈ ⑈0000015000⑈

ENDORSE HERE

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE *

019 GFK 308111803#015 $150.00CC

⑆ 031581596⑈ 0960-10415 BREMER BK NA 111803

⑈0910⑆0001⑆9 ⑈ BREMER BANK NA<091311030>111803 111170000007

ENDORSE HERE

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE *

006 GFK 446122303#043 $270.00CC

⑆ 033500678 0960-10415 BREMER BK NA 122303

⑈0910⑆0001⑆9 ⑈ BREMER BANK NA<091311030>122303 111200000007

ENDORSE HERE

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE *

007 GFK423912#203#085 $570.00CC

⑆ 820316239⑈ 0960-10415 BREMER BK NA 121203

⑈0910⑆0001⑆9 ⑈ BREMER BANK NA<091311030>121203 111210000007