

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:) Bky No. 4-60106
)
Daniel S. Miller,)
)
Debtor.)
)
_____)
Daniel S. Miller,)
) Adversary No. 04-6106
Plaintiff,)
)
vs.) **DEFENDANT’S ANSWER TO**
) **PLAINTIFF’S COMPLAINT**
Richard Nikle,)
)
Defendant.)
_____)

Defendant, for his answer to Plaintiff’s Complaint, states as follows:

1. Unless specifically admitted, Defendant denies each and every allegation in Plaintiff’s Complaint.
2. Admits the allegations in Paragraphs 1 and 2 of Plaintiff’s Complaint.
3. Admits the allegations in Paragraph 3 of Plaintiff’s Complaint to the extent it is alleged therein that the Defendant is an individual residing at 19041 380th Avenue SW, East Grand Forks, Minnesota 56721.
4. Admits the allegations in Paragraphs 4 and 5 of Plaintiff’s Complaint.
5. Admits the allegations in Paragraph 6 of Plaintiff’s Complaint to the extent it is alleged therein that the Defendant received payments totaling \$990.00 from the Plaintiff within 90 days prior to February 3, 2004.

6. Admits the allegations in Paragraph 7 of Plaintiff's Complaint to the extent it is alleged therein that annexed as Exhibit A to the Complaint are copies of the Debtor's checks 22688, 22942 and 23010 totaling \$990.00 payable to the Defendant.

7. Admits the allegations in Paragraph 8 of Plaintiff's Complaint to the extent it is alleged therein that the payments referenced in Paragraph 6 of Plaintiff's Complaint were made with respect to debts owed by the Plaintiff to the Defendant.

8. Admits the allegations in Paragraph 9 of Plaintiff's Complaint.

9. Denies the allegations in Paragraph 10 of Plaintiff's Complaint.

10. Admits the allegations in Paragraph 11 of the Plaintiff's Complaint to the extent it is alleged therein that the payments referenced in Paragraph 6 of Plaintiff's Complaint were made within 90 days prior to February 3, 2004.

11. Lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraphs 12 and 13 of Plaintiff's Complaint and thus, denies the same placing Plaintiff on his strict proof in connection therewith.

12. Paragraph 14 states a legal conclusion rather than a statement of fact and thus, Defendant need neither admit nor deny the same.

13. Admits the allegations in Paragraph 15 of Plaintiff's Complaint to the extent it is alleged therein that the payments referenced in Paragraph 6 of Plaintiff's Complaint were made to the Defendant.

14. Specifically denies the allegations in Paragraphs 16 of Plaintiff's Complaint.

15. Paragraphs 17 through 20 of Plaintiff's Complaint state legal conclusions rather than allegations of fact and thus, Defendant need neither admit nor deny the same.

16. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

17. Pending the completion of discovery, Plaintiff reserves all available affirmative defenses including those that must be specially plead under Rules 8 and/or 12 of the Federal Rules of Civil Procedure and those provided under 11 U.S.C. § 547(c).

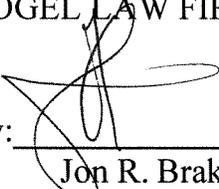
18. Defendant states that the transfer referred in Paragraph 6 of Plaintiff's Complaint was an exchange for new value and/or that it was the payment of a debt incurred in the ordinary course of the business affairs of the Plaintiff and the Defendant. As a consequence, 11 U.S.C. § 547(c)(2) and/or (4) preclude avoidance of the transfer.

WHEREFORE, Defendant prays for entry of judgment on Plaintiff's Complaint as follows:

1. For the dismissal of Plaintiff's Complaint with prejudice and the denial of any relief thereunder.
2. For its costs and disbursements incurred herein.
3. For such other and further relief as this Court deems just and equitable.

Dated this 4th day of October, 2004.

VOGEL LAW FIRM

By: 

Jon R. Brakke #10765

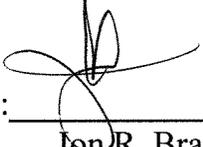
218 NP Avenue
P.O. Box 1389
Fargo, ND 58107-1389
(701) 237-6983
ATTORNEY FOR DEFENDANT,
RICHARD NIKLE

DEMAND FOR A JURY TRIAL

To the extent any of the issues in this proceeding are triable to a jury, Defendant demands trial by jury of the maximum number of persons permitted by law.

Dated this 4th day of October, 2004.

VOGEL LAW FIRM

By: 

Jon R. Brakke #10765

218 NP Avenue
P.O. Box 1389
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ATTORNEY FOR DEFENDANT,
RICHARD NIKLE

RE: Daniel S. Miller, Debtor - Case No. 04-60106
Daniel S. Miller v. Richard Nikle - Adversary No. 04-6106

STATE OF NORTH DAKOTA)
) ss AFFIDAVIT OF SERVICE
COUNTY OF CASS) BY MAIL

Lori Thrall, being first duly sworn on oath, does depose and say: She is a resident of County of Cass, City of Fargo, State of North Dakota, is of legal age and not a party to or interested in the above entitled matter.

On October 6, 2004, your affiant served the following documents:

- 1. DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT;**

by placing true and correct copies in envelopes addressed as follows:

Michael S. Dove
Gislason & Hunter, LLP
P.O. Box 458
New Ulm, MN 56073-0458

and causing them to be placed in the mail at Fargo, North Dakota with first-class postage prepaid.

Lori Thrall
Lori Thrall

Subscribed and sworn to before me this 6th day of October, 2004.

Lynne Spaeth
Notary Public

