

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Daniel S. Miller,

Bankruptcy No.: 04-60106

Debtor.

Unsecured Creditor's Committee and  
Brian Erickson, Individually and as  
Co-Chair of the Unofficial Committee  
of Unsecured Creditors,

Plaintiffs,

Adv. No. 04-6131

v.

Daniel S. Miller,

Defendant.

**MEMORANDUM IN SUPPORT OF MOTION  
FOR JUDGMENT ON THE PLEADINGS**

The Unsecured Creditor's Committee, acting through the Co-Chairman, Brian Erickson filed an action to deny discharge to the Debtor under 11 U.S.C. §727 on or about September 29, 2004. Brian Erickson also is a Plaintiff in this matter as an individual and his individual action is not the subject of this Motion. The Defendant seeks judgment on the pleadings as to the complaint by the Unsecured Creditor's Committee under Bankruptcy Rule 7012(b) and FRCP 12(c).

**FACTS**

This case was originally filed as an Involuntary Chapter 7 case. The Debtor converted the case to one under Chapter 11. The United States Trustee caused a Creditors Committee to

be formed. The Debtor filed a Liquidating Plan which was denied Confirmation. The case was then converted to Chapter 7 as a result of the Court's Order of September 29, 2004. This fact is not in the Pleadings by the Plaintiffs.<sup>1</sup>

The above-entitled action was commenced on September 29, 2004. The Plaintiffs are the Unsecured Creditors Committee, by and through Brian Erickson, and Mr. Erickson in his individual capacity as a Creditor. This motion does not include a claim for relief against Mr. Erickson, as he is entitled to pursue the Objection to Discharge as a Creditor.

### ARGUMENT

Bankruptcy Rule 7012(b) provides that Rule 12(b)-(h) F.R. Civ.P. Rules apply in Bankruptcy Court proceedings. F.R.Civ.P. Rule 12(c) provides for judgment on the pleadings if the Complaint is not entitled to the relief requested from an examination of the pleadings. Under Rule 12, the assertions in the complaint are assumed to be true. The Complaint asserts that the action is brought under 11 U.S.C. §727 and that the UCC has authority to commence this action pursuant to the powers granted it under 11 U.S.C. §1103. This assertion is wrong as a matter of law and the UCC has no standing to bring a discharge action under 11 U.S.C. §727.

11 U.S.C. §727(c)(1) provides: "The Trustee, a creditor or the United States Trustee may object to the granting of a discharge." The Committee is not one of these entities. See *In Re Dygert*, 232 B.R. 155 (Bky.Minn. 1999). In that case, Judge Dreher held that the statutory language clearly states that other than the Trustee or the United States Trustee, only a **creditor** may object to discharge. *Dygert* at 156. Judge Dreher also held that the UCC is not a creditor

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<sup>1</sup> The Defendant also believes that the Unsecured Creditors Committee has ceased to exist as a result of the conversion of the case to Chapter 7. That is an additional reason why the Unsecured Creditors Committee action should be dismissed.

and that the Committee has no standing to object to discharge under 11 U.S.C. §727.

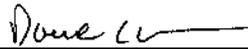
The same rationale is applicable in the present case. The Committee has no standing to sue and its claim must be dismissed. Mr. Erickson's action will continue as he has a claim against the Debtor and is a creditor.

### CONCLUSION

The Court must dismiss the claim of the UCC as it has no standing to bring this action based upon a clear reading of 11 U.S.C. 727(c)(1) and the case law in this District.

Dated this 12<sup>th</sup> day of October, 2004.

FLUEGEL, HELSETH, MCLAUGHLIN,  
ANDERSON & BRUTLAG, CHARTERED



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David C. McLaughlin #127383  
25 Northwest 2nd St., Suite 102  
Ortonville, MN 56278  
(320) 839-2549