
**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

**EDWARD LYLE GROSS AND NELLIE DAUNE ROBERTS, DEBTORS
BANKRUPTCY CASE NO. 02-94367-GFK
CHAPTER 7
ADVERSARY CASE NO. 03-3114
ADVERSARY CASE NO. 03-3090**

Michael S. Dietz, Trustee of the Bankruptcy Estate
of Edward Lyle Gross and Nellie Daune Roberts,

Plaintiff,

vs.

Edward L. Gross and Nellie Daune Roberts,

Defendants.

The Great-West Life Assurance Company,

Plaintiff,

vs.

Edward L. Gross and Nellie Daune Roberts,

Defendants.

DEFENDANTS' TRIAL BRIEF

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NOTE TO COURT: THIS TRIAL BRIEF APPLIES TO BOTH ADVERSARY PROCEEDINGS: ADVERSARY PROCEEDING NUMBER 03-3114 AND ADVERSARY PROCEEDING NUMBER 03-3090.

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STATEMENT OF FACTS

The Debtors/Defendants, Dr. Edward Lyle Gross (Dr. Gross) and Nellie Daune Roberts (Daune) are Canadian citizens currently residing in Rochester, MN. Dr. Gross moved to Rochester in September 2001 when he accepted a job offer from the Mayo Clinic. Daune Roberts, his wife, followed him. Prior to moving to the U.S.A., Debtors resided in Edmonton, Alberta, Canada.

On August 8, 1995, Dr. Gross commenced a lawsuit against The Great-West Life Assurance Company (GWL) in the Court of Queen's Bench of Alberta, Judicial District of Edmonton, Canada, for negligent misrepresentation and breach of contract.

On May 2, 2000, the Court of Queen's Bench of Alberta rendered a decision in favor of Dr. Gross. On May 24, 2000, the judgment was entered. On September 20, 2000, the Court of Queen's Bench of Alberta entered a Consent Order stating that GWL must pay Dr. Gross, *inter alia*, the costs awarded by the Court of Queen's Bench of Alberta in the amount of \$190,000 CAD.

On or about June 26, 2000, GWL paid Dr. Gross \$190,000 CAD representing the amount due under the Consent Order for costs awarded to Dr. Gross by the Court of Queen's Bench of Alberta.

Dr. Gross was aware that GWL was going to appeal the judgment by the Court of Queen's Bench of Alberta, including the award of \$190,000 CAD.

On February 20, 2002, the Court of Appeal of Alberta reversed the trial judgment and ordered that Dr. Gross pay GWL costs for the trial and appeal, and that Dr. Gross return the \$190,000 CAD paid to him by GWL. Judgment was entered on October 9, 2002.

GWL demanded that Dr. Gross return the \$190,000 CAD. Dr. Gross has been unable to return the \$190,000 CAD to GWL.

On November 21, 2002, the judgment of the Court of Appeal of Alberta was duly registered with the Third Judicial District Court, Olmsted County, Minnesota, in the amount of \$300,780.71 USD. Included in this judgment is the \$190,000 CAD that Dr. Gross did not return to GWL.

In July 2002, Defendants sold a house in Canada known as the Douglas house. Daune received \$354,401.75 CAD in partial payment from the closing on the sale of the Douglas house. Garnishment papers from GWL were served upon Dr. Gross on or about December 11, 2002.

Dr. Gross and Daune filed a Chapter 7 bankruptcy on December 20, 2002. Michael S. Dietz (Trustee) was appointed Chapter 7 Trustee of the bankruptcy estate on December 23, 2002.

The Section 341 meeting was held on January 24, 2003. GWL submitted an Application for Rule 2004 Examination of Dr. Gross on February 12, 2003. The Rule 2004 examination was held on March 6, 2003. The Trustee deposed Daune on March 20, 2003.

GWL commenced its adversary proceeding (Adversary Proceeding Number 03-3090) on March 25, 2003. GWL is claiming, among other things, that Defendants transferred, removed or concealed property of the estate within one year prior to and at a time after filing of the bankruptcy petition; concealed or failed to preserve documents critical to ascertain their financial condition and business affairs; gave false oaths or accounts at the Section 341 meeting and at their depositions; and have failed to satisfactorily explain losses or deficiencies of assets.

Debtors amended their Voluntary Petition and Schedules B, C, D and J on April 8, 2003. The Voluntary Petition was changed to add Daune's social security number and Schedule B was amended to add an itemized list and values of personal and household items as well as jewelry.

Following appraisals, Schedule C was amended to change the exemption amounts to reflect the added items on Schedule B; Schedule D was changed to show corrected mortgage and exemption amounts; and Schedule J was changed to add originally overlooked expenses. Debtors amended their Schedule C a second time on May 9, 2003 to correct exemption categories.

Trustee commenced his adversary proceeding (Adversary Proceeding Number 03-3114) against Defendants on April 15, 2003. The Trustee claims Defendants transferred, removed or concealed property of the estate within one year prior to and at a time after filing of the bankruptcy petition; gave false oaths or accounts at the Section 341 meeting and at their depositions; withheld recorded information from the Trustee; and have failed to satisfactorily explain a loss or deficiencies of assets.

A scheduling conference was held on August 20, 2003, which, for practical purposes, consolidated Adversary Proceeding Numbers 03-3090 and 03-3114. A Scheduling Order was issued on August 26, 2003, setting deadlines for discovery. A Scheduling Order for Trial was issued on June 9, 2004, setting deadlines for all pre-trial posturing and scheduling the trial for September 1, 2004.

ISSUES

A. Did Debtors transfer, remove, destroy, mutilate or conceal property within one year before filing of the bankruptcy petition with the intent to hinder, delay or defraud a creditor?

Short Answer: No.

B. Did Debtors transfer, remove, destroy, mutilate or conceal property at any time after filing of the bankruptcy petition with the intent to hinder, delay or defraud a creditor?

Short Answer: No

C. Did Debtors conceal, destroy, mutilate, falsify or fail to keep or preserve recorded information necessary to ascertain Debtors' financial condition?

Short Answer: No

D. Did Debtors knowingly and fraudulently make false oaths or accounts?

Short Answer: No

E. Did Debtors withhold any recorded information relating to Debtors' property or financial affairs?

Short Answer: No

F. Did Debtors fail to satisfactorily explain any loss of assets or deficiency of assets to meet Debtors' liabilities?

Short Answer: No

LEGAL ARGUMENT

The Trustee and GWL seek to deny Defendants a discharge under several sections of 11 U.S.C. §727(a): §727(a)(2)(A); §727(a)(2)(B), §727(a)(3), §727(a)(4)(A); §727(a)(4)(D), and §727(a)(5). "Conduct properly addressed under §727(a) is a broad, deliberate failure on the debtor's part to act fairly, equitably, and responsibly in the conduct of debtor-creditor relations, resulting in a more pervasive injury to bankruptcy's equitable process of adjustment of those relations." *Peoples State Bank of Mazeppa, MN v. Drenckhahn*, 77 B.R. 697, 707 (Bankr. D. Minn. 1987).

These provisions, "as all provisions for objection to the full discharge in bankruptcy under §727(a), must be construed strictly in favor of the debtor, and strictly against the objecting creditor." *Wilder Health Care Center v. Elholm*, 80 B.R. 964 (Bankr. D. Minn. 1987). "The

petitioning creditor bears the burden of proving all of the elements set forth under statute.” *Id* at 967.

A. 727(a)(2)(A) and 727(a)(2)(B)

11 U.S.C. §727(a)(2)(A) provides “The court shall grant the debtor a discharge, unless the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed property of the debtor, within one year before the date of the filing of the petition.”

This statute requires four elements be proven. First, the act complained of must have been done within one year before or at any time after the date of filing. Second, the act was done with actual intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property under Bankruptcy Code. Third, the act was that of the debtor or his duly authorized agent. Fourth, the act consisted of transferring, removing, destroying or concealing any of debtor’s property or permitting any of these acts to be done.

To prevail, “the plaintiff must show that the debtor has engaged in the proscribed conduct and that the property involved must be property of the debtor or the property of the debtor’s estate (if the transfer occurred post-petition.)” *Northeast Nebraska Economic Development District v. Wagner*, 305 B.R. 472, 475 (8th Cir. BAP 2004).

Both Plaintiffs claim Defendants withdrew significant amounts of cash currency from their bank accounts within six months of filing their bankruptcy petition with the intent to hinder, delay or defraud creditors. The Trustee claims Defendants’ sales of a 1971 Jaguar XKE and a

1953 Austin A40 Sport as well as cashing of \$11,930 USD in income tax refunds were done for the same reason.

The first criterion to evaluate is when the acts of concealment took place and whether they occurred within one year of the bankruptcy filing.

Defendants admit that Daune received \$354,401.75 CAD in July 2002 from the sale of the Douglas house. Withdrawals were made from their bank accounts in October and November 2002. Dr. Gross sold a 1971 Jaguar XKE on or about September 12, 2002, and a 1953 Austin A40 Sport on or about March 10, 2002. These dates are within one year of Defendants' bankruptcy filing.

The second criterion to evaluate is whether these acts were done with the intent to hinder, delay or defraud a creditor or the Trustee.

The determination of intent is a matter of fact before this Court. "The making of this inference is actually a two-part process. The inferring of the debtor's actual state of mind from a body of circumstantial evidence is only the first part of the inquiry into the intent element. Once the Court finds the debtor's actual intent as a matter of fact, it must then determine as a matter of law whether the proven intent equates to the state of mind which the statute is designed to punish." *In re Wilder Health Care Center*, 80 B.R. at 968

The third criterion to be determined is whether the act was that of the debtor or his authorized agent. The Debtors/Defendants are the only parties involved.

The fourth criterion to determine is whether the act consisted of transferring, removing, destroying or concealing any of debtor's property or permitting any of these acts to be done.

Although Dr. Gross and Daune did transfer funds between bank accounts and sell two vehicles belonging to them, these acts were not concealed from the Plaintiffs with any proscribed intent. Daune spoke about the bank account transfers at her deposition on March 20, 2003; Dr. Gross admitted selling the vehicles at his deposition on March 6, 2003; and Defendants have provided to the Plaintiffs numerous documents related to the bank account transfers and sales.

As for the Trustee's allegations of concealing \$11,930 USD in income tax refunds, the Defendants have no recollection or record of either receiving or spending these funds. Despite the Defendants' lack of recall, it is reasonable to conclude that Defendants did receive and spend these funds. The income and expenses spreadsheets (Defendants' Exhibits A through F) show income and expenditures for a six-month period: July 1, 2002 through December 18, 2002. During this time period, Defendants expenditures exceeded their income from all sources, excluding the income tax refunds money, by \$59,186.17 USD. It is likely that the income tax refunds were spent, along with their other funds.

11 U.S.C. §727(a)(2)(B) reads "The court shall grant the debtor a discharge, unless the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed property of the estate, after the date of the filing of the petition." This statute requires proof of the same four elements necessary in §727(a)(2)(A).

The Trustee and GWL allege that Defendants concealed numerous items of personal property including jewelry and household goods and furnishings. The Trustee also claims non-disclosure of a hot tub.

The factors in contention under §727(a)(2)(B) are the intent of the Defendants and whether property was actually concealed.

Defendants failed to specifically list certain items of personal property on their original schedules. However, Defendants voluntarily obtained an appraisal of their personal property and amended Schedule B to itemize the property. An itemization and value of the personal property scheduled on the Amended Schedule B is shown in Defendants' Exhibit S. Daune also cooperated with the Trustee's request for an appraisal of her two rings. (Defendants' Exhibit T) "[T]he fact that a debtor comes forward with omitted material of his own accord is strong evidence that there was no fraudulent intent in the omission." *Jordan v. Bren*, 303 B.R. 610 (8th Cir. BAP 2004) [citing *Gullickson v. Brown (In re Brown)*, 108 F.3d 1290 (10th Cir. 1997)].

The non-disclosure of the hot tub, claimed by the Trustee, is really no issue at all when the facts are examined. Defendants purchased property located at 2345 Transit Court, Rochester, MN on or about June 1, 2001. Included in the purchase of this home was the hot tub. (Defendants' Exhibit U, page 1). Defendants believed it was included as a part of the homestead. Later, the Transit Court property was ordered turned over to the Trustee who eventually sold it. Included in that sale was the hot tub. (Defendants' Exhibit Y, page 9).

B. 727(a)(3)

11 U.S.C. §727(a)(3) states "The court shall grant the debtor a discharge, unless the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case."

This statute requires the claimant to prove either that the act or omission complained of was that of the debtor or of someone for whose conduct debtor is legally responsible; or, in the alternative, there is a failure to keep proper records, books, or other financial documents sufficient to recreate debtor's financial condition and business transactions.

GWL claims Defendants unjustifiably concealed, destroyed, mutilated, falsified or failed to keep or preserve recorded information critical to ascertaining Defendants' financial condition and business affairs.

Although Defendants did not keep every receipt, invoice, credit card statement, etc., “[t]he Code does not require an impeccable system of bookkeeping. Records, however, must ‘sufficiently identify the transaction so that intelligent inquiry can be made of them.’” *Miller v. Pulos*, 168 B.R. 682, 690 (Bankr. D. Minn. 1994) [citing *Meridian Bank v. Alten*, 958 F.2d 1226, 1230 (3d Cir. 1992) (quoting *Matter of Decker*, 595 F.2d 185, 187 (3d Cir. 1979))].

Defendants provided numerous documents that were in their possession to both Plaintiffs. Other documents were requested and obtained from Canadian banks, accountants, attorneys, and other professional persons, both in the United States and Canada, with whom the Defendants have had business dealings. These documents included records from the sale of Dr. Gross's clinic and the sales of the family's houses in Canada. These documents were then provided to both Plaintiffs.

Spreadsheets were created detailing Defendants' financial transactions from July 1, 2002, through December 18, 2002. (Defendants' Exhibits A through F). These spreadsheets were also provided to both Plaintiffs during the discovery process.

“The adequacy of a debtor’s books and records for the purposes of §727(a)(3) must be gauged on a case-by-case basis...” *In re Drenckhahn*, 77 B.R. at 707. Adequacy also depends on whether or not the debtor’s financial condition and recent business transactions for a reasonable period of time prior to filing of the bankruptcy petition can be ascertained with substantial completeness and accuracy. “The Bankruptcy Court has wide discretion to determine adequacy.” *Id* at 708. “The determination must always be made in light of the purpose of 11 U.S.C. §727(a)(3), which is to serve the goal of fair dealing by making a debtor’s right to discharge dependent on his ability to account, via written record, for his current financial condition and for the nature of his business transactions for a reasonable period in the past, upon the trustee’s or creditors’ demand.” *Id* at 708.

The Debtors have provided substantial and adequate records of their financial transactions.

C. 727(a)(4)(A) and 727(a)(4)(D)

11 U.S.C. §727(a)(4)(A) allows the court to deny debtor’s discharge when “the debtor knowingly and fraudulently, in or in connection with the case, made a false oath or account.” To prevail under §727(a)(4)(A), it must be proven the false oath was knowingly and fraudulently made and the false oath must be material.

Both the Trustee and GWL allege Defendants made many false oaths or accounts at the Section 341 meeting, in their individual depositions and by failing to disclose property on their bankruptcy schedules first filed on December 20, 2002. They further allege the false oaths or accounts relate to the existence, or lack thereof, of personal property not originally listed in Defendants’ bankruptcy papers.

However, Defendants voluntarily amended their Voluntary Petition and Schedules B, C, D and J to correct errors and omissions in their original documents. “[T]he fact that a debtor comes forward with omitted material of his own accord is strong evidence that there was no fraudulent intent in the omission.” *In re Jordan*, 303 B.R. 610 [citing *In re Gullickson*].

11 U.S.C. §727(a)(4)(D) allows denial of discharge when “debtor knowingly and fraudulently, in or in connection with the case, withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs.” Under §727(a)(4)(D), one must prove debtor or someone for whose conduct debtor is legally responsible did the withholding and it was done knowingly and fraudulently. “The question of a debtor’s ‘knowledge and intent under §727(a)(4) is a matter of fact.’” *Rasmussen v. Unruh*, 278 B.R. 796 (Bankr. D. Minn. 2002) [citing *Cepalak v. Sears (In re Sears)*, 246 B.R. 341, 347 (8th Cir. BAP 2000)].

The Trustee claims Defendants knowingly and fraudulently withheld recorded information regarding their property or financial affairs by failing to deliver bank records and documentation regarding the sale of a 1971 Jaguar XKE and a 1953 Austin A40 Sport.

Defendants, during the discovery process and through general correspondence with the Trustee, provided him with numerous documents relating to Defendants’ property and financial affairs. Documents that were in the Defendants’ possession were provided. Defendants also requested documents from Canadian banks, accountants, attorneys, and other professional persons, both in the United States and Canada, with whom the Defendants have had business dealings. These documents were then provided to Trustee. (Defendants’ Exhibits G1 through L12, S, T, and BB).

Dr. Gross readily admitted owning and selling the 1971 Jaguar XKE and the 1953 Austin A40 Sport. The Trustee was provided with documentation regarding the sale of the 1971 Jaguar XKE (Defendants' Exhibits O and P) and the 1953 Austin A40 Sport (Defendants' Exhibits Q and R) on or about October 10, 2003, and again on or about July 30, 2004. These documents were in Canada. It took time to obtain them.

The Defendants did not make false oaths or accounts.

D. 727(a)(5)

According to 11 U.S.C. §727(a)(5), "The court shall grant the debtor a discharge, unless the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities."

"[C]reditor must first prove actual existence of assets which should be in debtor's possession but are missing, and then show debtor has failed to satisfactorily explain their absence." *In re Drenckhahn*, 77 B.R. at 706. If the creditor successfully demonstrates a loss or deficiency of assets, the burden of proof then shifts to the debtor to explain the loss.

Both the Trustee and GWL allege that Debtors have unsatisfactory explanations for losses or deficiencies of assets. Specifically, the allegations surround the disposition of the \$354,401.75 CAD received from the sale of the Douglas house, the proceeds from the sales of the 1971 Jaguar XKE and 1953 Austin A40 Sport, proceeds from the sale of a business known as ELG Holdings, Ltd. and the \$106,000 CAD income loss. The Trustee also claims an unsatisfactory explanation for the loss of \$11,930 USD in tax refunds allegedly received by Defendants

The first element the Plaintiffs need to prove to prevail on claims under §727(a)(5) is that there are missing or unaccounted for assets.

Defendants have accounted for the disposition of the proceeds from the sales of the Douglas house (Defendants' Exhibits A through F) and the 1971 Jaguar XKE (Defendants' Exhibit C) within their income and expenses spreadsheets. Defendants' Exhibits G1 through L12 support the expenditures detailed in the spreadsheets. Dr. Gross has testified, and will testify, that the proceeds from the Jaguar vehicle sale went to Canadian Imperial Bank of Commerce (CIBC) to cover overdrawn checking accounts (Defendants' Exhibits I2, I3, and I4) Dr. Gross also has testified, and will testify, that the proceeds from the sale of the 1953 Austin A40 Sport were paid on a loan on another vehicle owed by Defendants but used by their daughter.

The disbursements of the proceeds from the ELG Holdings, Ltd. sale are documented on page 43 of Defendants' Exhibit BB. Specifically, the proceeds went to CIBC to pay off CIBC debt and working capital loans, funds were deposited into the business account of E. Lyle Gross Professional Corporation, invoices from Witten, LLP (a Canadian accounting firm) were paid and the remaining funds were deposited into Dr. Gross's savings account at CIBC. Dr. Gross has testified, and will testify, that the funds deposited into his CIBC savings account went into his and Daune's house. They were also used to pay large income tax debts owed to Revenue Canada.

The \$106,000 CAD loss listed on Defendants' bankruptcy papers is explained in Defendants' Exhibit CC. The loss was incurred by E. Lyle Gross Professional Corporation

during the fiscal year ending April 30, 2000. Various ordinary business expenses account for the loss.

Concerning the loss of \$11,930 USD in income tax refunds, it is reasonable to assume receipt and expenditure of these funds during the period covered by the income and expenses spreadsheets. (Defendants' Exhibits A through F). While the actual receipt of the income tax refunds is not directly shown, the expenditures disclosed by the spreadsheets are greater than all other income shown, i.e., the Douglas house proceeds, car sales proceeds and earned income. Given that the expenditures exceed those sources, it is more likely than not that the refunds were spent also.

Plaintiffs have not shown any assets to be missing or unaccounted for.

The second element to be proven is that the Defendants' explanations of any missing or lost assets are not satisfactory. "[A] debtor may come forward with an explanation of loss or deficiency of assets during the trial of an objection to discharge under §727(a)(5), and present that explanation to the court for its determination as to whether or not it is satisfactory....Section 727(a)(5) does not require that the explanation itself be meritorious, or that the loss or other disposition of assets be proper; it only requires that the explanation satisfactorily describe or account for the disposition...These are questions of fact." *In re Drenckhahn*, 77 B.R. at 709.

Defendants have fully and satisfactorily explained the transactions and losses.

CONCLUSION

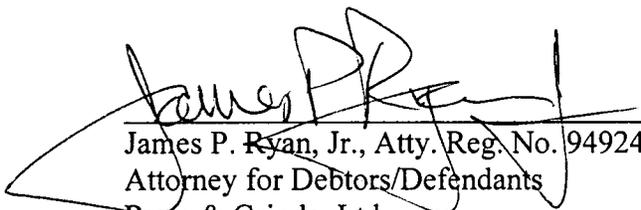
Dr. Gross and Daune have had an unforeseeable change in fortune. While residing in Canada, Dr. Gross initiated a lawsuit against The Great-West Life Assurance Company. Dr.

Gross initially won his suit but, upon appeal, The Great-West Life Assurance Company prevailed and obtained a judgment against him. Making matters worse is Dr. Gross and Daune lost significant amounts of money in home sales in Canada and Dr. Gross's business lost money. Upon moving to the United States, they were taken advantage of when financing their home. They purchased a home they could not afford, causing them to lose even more money. These numerous misfortunes forced Dr. Gross and Daune to file Chapter 7 bankruptcy.

The issues in their bankruptcy are simple but there are numerous documents, financial transactions and bank accounts. The Debtors may not remember every single detail. However, at no time prior to or during the pendency of the bankruptcy, have Dr. Gross and Daune acted other than in an open, forthcoming, cooperative manner. They are, in good-faith, trying to resolve their financial difficulties and begin a new life in the United States.

Dated: 8/11/04

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Edward Lyle Gross and
Nellie Daune Roberts,

Debtors,

BANKRUPTCY CASE NO. 02-94367-GFK
CHAPTER 7

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Michael S. Dietz, Trustee of the Bankruptcy
Estate of Edward L. Gross and Nellie Daune
Roberts,

Plaintiff,

vs.

ADVERSARY CASE NO. 03-3114

Edward L. Gross and Nellie Daune Roberts,
Defendants.

The Great-West Life Assurance Company,
Plaintiff,

vs.

ADVERSARY CASE NO. 03-3090

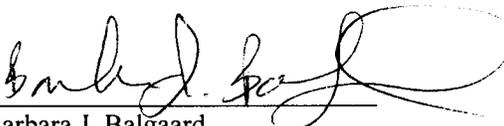
Edward L. Gross and Nellie Daune Roberts,
Defendants.

Barbara J. Balgaard, employed by Ryan & Grinde, LTD, attorney(s) licensed to practice law in this court, with an office address of 407 14th Street NW, PO Box 6667, Rochester, Minnesota 55903-6667, declares that on August 11, 2004, she served the annexed **DEFENDANTS' TRIAL BRIEF and DEFENDANTS' OBJECTIONS TO PLAINTIFFS' EXHIBITS** upon each of the entities named below by **facsimile** and by **mailing** to each of them a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Rochester, Minnesota, addressed to each at their respective addresses as follows:

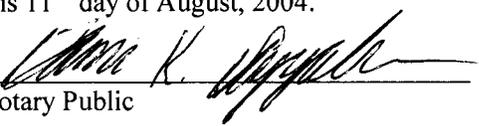
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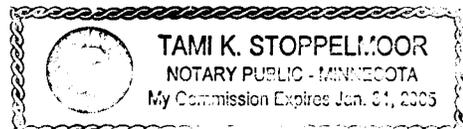
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MINNEAPOLIS MN 55415

Dated: August 11, 2004


Barbara J. Balgaard

Subscribed and sworn to before me
this 11th day of August, 2004.


Notary Public



RE: Edward L. Gross and Nellie Daune Roberts
Chapter 7 Bankruptcy
Bankruptcy Case No. 02-94367-GFK
Michael S. Dietz, Trustee vs. Gross/Roberts
Adversary Proceeding No. 03-3114

AFFIDAVIT OF PERSONAL SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF OLMSTED)

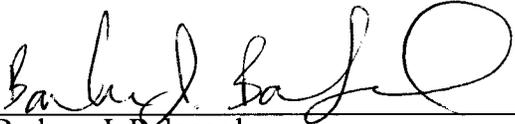
Barbara J. Balgaard, of the City of Rochester, County of Olmsted, in the State of Minnesota, being duly sworn, says that on the 11th day of August 2004, she served the attached documents personally by handing to and leaving with Erin Boese a true and correct copy of said documents.

DOCUMENTS SERVED:

- ◆ Defendants' Trial Brief
- ◆ Defendants' Objections to Plaintiffs' Exhibits

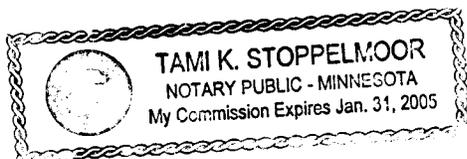
PARTIES SERVED:

MR MICHAEL S. DIETZ,
CHAPTER 7 TRUSTEE
DUNLAP & SEEGER, P.A.
206 SOUTH BROADWAY, SUITE 505
ROCHESTER, MN 55903



Barbara J. Balgaard

Subscribed and sworn to before me this 11th day of August 2004.





Notary Public