

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

EDWARD L. GROSS AND NELLIE
DUANE ROBERTS

Bky Case No. 02-94367
Chapter 7

Adversary Proceeding No.

Debtors.

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

**COMPLAINT OBJECTING TO
DISCHARGE**

Plaintiff,

vs.

Edward L. Gross and Nellie Daune Roberts,

Defendants.

For his Complaint Plaintiff states as follows:

1. Michael S. Dietz is the duly appointed Trustee of the above captioned bankruptcy estate.
2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. 1334 and 157.
3. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

Count I - Section 727(a)(2)(A)

4. All paragraphs preceding and following this Count are hereby incorporated by reference.
5. In July of 2002, the Defendants sold a house in Canada, known as the Douglas house.
6. The Defendants received \$354,401.75 in partial payment from the closing on the sale of the Douglas house.
7. Defendant, Nellie Daune Roberts, cashed the proceeds check from the Douglas house sale and received \$354,401.75 in cash currency.

8. On approximately five occasions during the six months prior to filing their bankruptcy Petition, the Defendants took significant withdrawals from their bank accounts in the form of cash currency. The withdrawals include without limitation, \$5,350.00 on October 30, 2002, from the Defendants' bank account at First Federal; \$4,000.00 on November 13, 2002, from the Debtors. Defendants' bank account at First Federal; \$40,000.00 on November 20, 2002, from the Defendants' bank account at First Federal.
9. On November 5, 2002, the Defendants withdrew \$52,830.72 from their CIBC bank account in Edmonton, Alberta.
10. Shortly after September 27, 2002, the Defendants received a federal income tax refund in the amount of \$10,191.00. At approximately the same time they also received a Minnesota income tax refund in the amount of \$1,739.00. The Defendants cashed both income tax refund checks.
11. The Defendants sold a 1971 Jaguar XKE.
12. The Defendants sold a 1953 Austin A40 Sport.
13. The foregoing transactions were undertaken by the Defendants to conceal their property within one year before the date of their bankruptcy Petition and were undertaken with the intent to hinder, delay, or defraud creditors or the bankruptcy Trustee.
14. Pursuant to 11 U.S.C. § 727 (a)(2)(A), the Defendants should be denied a discharge.

Count II - Section 727(a)(2)(B)

15. All paragraphs preceding and following this Count are hereby incorporated by reference.
16. As of the date of filing their bankruptcy Petition, the Defendants owned jewelry and furs which they valued at \$25,000.00. This included, without limitation, a gold and platinum wedding ring, and a Tourmaline ring. It further includes a ring of unknown description which the Defendants valued in excess of \$10,000.00 on October 1, 2001.

17. As of the date of filing their bankruptcy petition, the Defendants owned a book collection which they valued at \$20,000.00.
18. As of the date of filing their bankruptcy petition, the Defendants owned a firearm which they valued at \$500.00.
19. As of the date of filing their bankruptcy petition, the Defendants owned a television, stereo, tapes, records/CD's which they valued at \$50,000.00.
20. As of the date of filing their bankruptcy petition, the Defendants owned fine arts, antiques, and rugs, which they valued at \$20,000.000. This specifically includes the following antiques:
 - a. 3 book cases;
 - b. 1 chest;
 - c. 2 side tables;
 - d. 1 pine table;
 - e. 1 iron bed; and
 - f. 1 child's bed.
21. As of the date of filing their bankruptcy petition, the Defendants owned musical instruments, cameras, and sports equipment which they valued at \$10,000.00.
22. As of the date of filing their bankruptcy petition, the Defendants owned computers which they valued at \$20,000.00
23. As of the date of filing their bankruptcy petition, the Defendants maintained funds in an account in the name of Nellie Daune Roberts at Canada Trust with an undetermined amount of funds on deposit.
24. As of the date of filing their bankruptcy petition, the Defendants owned household goods and furnishings which they previously valued at \$150,000.00. This included items with a value of over \$450.00.

25. As of the date of filing their bankruptcy petition, the Defendants owned a hot tub which constituted personal property.
26. The Defendants did not disclose the existence of any of the assets identified in the foregoing portion of this Count when required to do so on their bankruptcy Petition and Schedules; at their Section 341 examination; at the 2004 examination of Lyle E. Gross; or at the deposition of Nellie Daune Roberts.
26. The foregoing assets constituted property of the Estate as of the date of filing.
27. The Defendants, with the intent to hinder, delay or defraud the bankruptcy Trustee concealed the existence of the property identified in this Count.
28. Pursuant to 11 U.S.C. § 727(a)(2)(B), the Defendants should be denied a discharge.

Count III - Section 727(a)(4)(A)

29. All paragraphs preceding and following this Count are hereby incorporated by reference.
30. The Defendants knowingly and fraudulently made a false oath or account by executing their bankruptcy schedules which did not disclose the existence of the property identified in Count 11, above.
31. The Defendants knowingly and fraudulently testified at their Section 341 examination that they had not received any money from a lawsuit filed in Canada against Great-West Life Assurance Company. In fact, on June 26, 2000, they received \$190,000.00.
32. The Defendants' knowingly and fraudulently testified at their Section 341 hearing that they did not have a total of more than \$500.00 of cash currency in their possession at any one time during the two years prior to filing their bankruptcy Petition.
33. The Defendants knowingly and fraudulently testified at their Section 341 hearing that they did not have property of the type set forth above in Count 11.

34. The Defendants knowingly and fraudulently testified at their Section 341 hearing that they had transferred a lien on their 1987 Jaguar automobile to Rod Goble prior to filing their bankruptcy petition. In fact, they did not transfer the lien until January 4, 2003, more than two weeks after filing their bankruptcy petition.
35. At the 2004 examination of Edward Lyle Gross, taken on March 6, 2003, the Defendant, Edward Lyle Gross specifically, knowingly, and fraudulently made a false oath or account by testifying that he did not own any of the property identified in Count II as of the date of his bankruptcy filing.
36. Defendant Nellie Daune Roberts specifically, knowingly and fraudulently made a false oath or account by testifying at her deposition on March 20, 2003, that she did not own any of the property identified in Count II as of the date of her bankruptcy filing.
37. Pursuant to 11 U.S.C. § 727(a)(4)(A), the Defendants should be denied a discharge.

Count IV - Section 727(a)(4)(D)

38. All paragraphs preceding and following this Count are hereby incorporated by reference.
39. Despite requests by the Trustee, the Defendants have withheld recorded information regarding their property or financial affairs by failing to deliver bank records related to the Canada Trust bank account in the name of Nellie Daune Roberts to the trustee.
40. Despite requests by the Trustee, the Defendants have withheld recorded information regarding the Defendants' property or financial affairs by failing to provide the Trustee with documentation regarding the sale of a 1971 Jaguar XKE and a 1953 Austin A40 Sport.
41. Pursuant to 11 U.S.C. § 727(a)(4)(D), the Defendants should be denied a discharge.

Count IV - Section 727(a)(5)

42. All paragraphs preceding and following this Count are hereby incorporated by reference.
43. The Defendants have failed to explain satisfactorily the loss of assets or deficiency of assets to meet the Defendants liabilities in the following respects:

- a. The Defendants are unable to satisfactorily account for the disposition of the \$354,401.75 represented by the check from the Douglas house sale which the Defendants cashed.
- b. The Defendants are unable to satisfactorily account for the cash withdrawals taken from the Defendants First Federal bank account described in paragraph 8 above.
- c. The Defendants are unable to satisfactorily account for the proceeds of the tax refund checks described above in the total amount of \$11,930.00, which were received during a period of less than ninety days prior to their bankruptcy filing.
- d. The Defendants are unable to satisfactorily account of the disposition of the proceeds from the sale of a 1971 Jaguar XKE and a 1953 Austin A40 Sport.
- e. The Defendants are unable to satisfactorily account for the withdrawal of \$52,830.72 from their CIBC account on November 5, 2002.

44. Pursuant to 11 U.S.C. § 727(a)(5), the Defendants should be denied a discharge.

WHEREFORE, Plaintiff prays the Court enter its Order denying the Defendants a discharge pursuant to 11 U.S.C. § 727, and for such other and further relief as the Court deems just and equitable.

Dated: April 15, 2003

DUNLAP & SEEGER, P.A.

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