

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 03-35883

Bruce E. Kiernat,

Debtor.

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St. Paul Academy and Summit School, the  
Alice S. French Trust, and the Richard S.  
French Trust,

Plaintiffs

ADV No. 03-3356

vs.

Bruce E. Kiernat,

Defendant.

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**ANSWER**

Bruce E. Kiernat (“Defendant”) for his Answer to the Complaint of St. Paul Academy and Summit School, the Alice S. French Trust, and the Richard S. French Trust (“Plaintiffs”) states and alleges as follows:

1. Defendant denies each and every allegation, matter and thing contained in Plaintiffs' Complaint unless otherwise stated herein.
2. Defendant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 and therefore denies the same.
3. Answering paragraph 2, Defendant admits that the Alice S. French Trust and the Richard S. French Trust were created by Alice S. French and Richard S. French and denies the remaining allegations therein.
4. Defendant admits the allegations in paragraph 3.
5. Defendant admits the allegations in paragraph 4.

6. Answering paragraph 5, Defendant states that the allegations therein state a legal conclusion to which no response is required.

7. Answering paragraph 6, Defendant admits that Alice S. French died in January of 1998, and that her Last Will left her probate Estate to her Revocable Trust. Defendant further admits that Richard S. French died in April 1999, and that his Last Will left his probate Estate to his Revocable Trust. Defendant denies the remaining allegations therein.

8. Answering paragraph 7, Defendant admits that the death of Alice S. French caused the termination of certain trusts created under the will of Benjamin Sommers dated March 3, 1999. Defendant denies the remaining allegations therein.

9. Answering paragraph 8, Defendant admits that he was attorney of record for the Alice S. French Estate with respect to the probate of the Estate, but affirmatively alleges that he was not attorney of record with respect to the litigation regarding the trust established by Benjamin Sommers and Doris Sommers that was venued in Ramsey County. Defendant further admits that he was attorney of record for the Richard S. French Estate with respect to the probate of the Estate, but affirmatively alleges that he was not attorney of record with respect to the litigation regarding the trust established by Benjamin Sommers and Doris Sommers that was venued in Ramsey County. Subject to verification with County records for document numbers and filing dates, Defendant admits that he was removed as a Trustee of the French Trusts in June, 2003, and that a trustee of St. Paul Academy and Summit School was appointed Trustee of the French Trusts. Defendant denies the remaining allegations therein.

10. Defendant denies the allegations in paragraph 9.

11. Defendant denies the allegations in paragraph 10, and affirmatively alleges that the controlling trust agreements authorized the Trustees to pay trustee and attorneys' fees without

Court approval. Alice French and Richard French approved all attorneys' fees paid to Defendant.

12. Defendant denies the allegations in paragraph 11, and affirmatively alleges that the controlling trust agreements authorized the Trustees to pay attorneys' fees without Court approval.

13. Defendant admits that the Saint Paul Academy and the Summit School has filed an objection to the payment of attorneys' fees for work performed on behalf of the Alice and Richard French Trusts. Defendant denies the remaining allegations therein.

14. Assuming Plaintiffs are referring to the SPA objection described in paragraph 12 of its complaint, Defendant admits the allegations in paragraph 13, subject to verification with County records for document numbers and filing dates.

15. Defendant admits the allegations in paragraph 14.

16. Answering paragraph 15, Defendant admits that he entered into a plea agreement on or about October 27, 2003, and further alleges that the document speaks for itself, that the Court accepted the plea, and that Defendant has paid the sum of \$58,800 as and for the restitution required.

17. Answering paragraph 16, Defendant admits that he did not seek the approval of SPA, the Court or the Attorney General prior to paying trustee and attorneys' fees from trust assets, denies that any attorneys' fees and/or trustee's fees were paid from Estate assets, and affirmatively alleges that the controlling Trust agreements authorized the Trustees to pay trustee and attorneys' fees without the prior approval of SPA, the Court or the Attorney General.

18. Defendant admits the allegations in paragraph 17.

19. Defendant denies the allegations in paragraph 18.

20. Defendant denies the allegations in paragraph 19.
21. Defendant denies the allegations in paragraph 20.
22. Answering paragraph 21, Defendant alleges that no response is required.
23. Defendant denies the allegations in paragraph 22.
24. Defendant denies the allegations in paragraph 23.
25. Defendant denies the allegations in paragraph 24.
26. Answering paragraph 25, Defendant alleges that no response is required.
27. Defendant denies the allegations in paragraph 26.

#### **AFFIRMATIVE DEFENSES**

28. Defendant asserts the following affirmative defenses: failure to state a claim upon which relief can be granted; claim is barred by doctrine of release; claim is barred in whole or in part by doctrines of estoppel and waiver; claim is barred by the doctrine of material breach and discharge; claim is barred by the doctrine of modification; failure to mitigate damages, if any; claims have been settled or adjudicated and therefore are barred by the doctrines of res judicata, collateral estoppel, accord and satisfaction and/or payment and release; insufficiency of service of process; claim is barred by fact that any injuries that the plaintiffs may have sustained were proximately caused by the acts, omissions, or fault of persons over whom Defendant exercised no control and for which acts, omissions or fault Defendant cannot be held liable.

**WHEREFORE**, Defendant Bruce E. Kiernat prays for the following relief: (a) for judgment dismissing Plaintiffs' complaint with prejudice on the merits; (b) for judgment awarding Defendant Bruce E. Kiernat his attorneys' fees and costs; and (c) for judgment granting

any other relief that the Court deems appropriate.

Dated: December 30, 2003.

**HENSON & EFRON, P.A.**

/e/ William I. Kampf  
William I. Kampf (#53387)  
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PROOF OF SERVICE

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The undersigned states that she is an employee of Henson & Efron, P.A., and in the course of said employment, on the date indicated below, she served the following:

**Answer**

on the entities named below and/or on the attached service by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail, unless otherwise noted; and that she certifies the foregoing under penalty of perjury.

Robert M. McClay, Esq.  
McClay Alton, PLLP  
951 Grand Avenue  
St. Paul, MN 55105

U.S. Trustee  
1015 U.S. Courthouse  
300 South Fourth St.  
Minneapolis, MN 55415

Dated: December 30, 2003

  
Susan A. Erickson