

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:  
Brian Kent Larsen,

Case No: 03-35040-GFK

Debtor(s).

**NOTICE OF HEARING AND MOTION FOR TURNOVER**

TO: THE ABOVE NAMED DEBTOR(S), HIS ATTORNEY RICHARD H. DARBY, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Charles W. Ries, the duly appointed and acting trustee in the above captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 22, 2004 at 10:30 a.m., or as soon thereafter as counsel can be heard, before Honorable Gregory F. Kishel, in Court Room No: 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on September 17, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 13, 2004, which is seven before the time set for the hearing (excluding Saturdays, Sundays and holidays). **IF NO RESPONSE IS TIMELY FILED, THE COURT MAY IN ITS DISCRETION ENTER AN ORDER GRANTING TURNOVER WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334, Federal Rules of Bankruptcy procedure 4002, and Local Rule 1070-1. The petition commencing the debtor(s)' Chapter 7 case was filed on July 23, 2003. Charles W. Ries was appointed as Chapter 7 trustee on July 24, 2003. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. §521, 541, 542 and 704 and Federal Rules of Bankruptcy Procedure 4002 and 7001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 9013-1. The Chapter 7 trustee requests turnover of property of the estate, and certain documents and information in order to properly administer the bankruptcy case.

6. By correspondence dated August 26, 2003; September 19, 2003; October 6, 2003; October 22, 2003; February 10, 2004; and May 13, 2004, attached hereto and incorporated herewith as Exhibit A, the trustee required turnover of property of the estate and information necessary to complete case administration.

7. The debtor has failed to turn over:
- a. copy of the title to the Chevrolet Avalanche, verification of amount of debt against said vehicle, and turnover of the vehicle to the extent debtor has an interest in said vehicle;

- b. computation and turnover of accrued, non-exempt wages;
- c. copies of the stipulation between the debtor and his spouse, the proposed settlement relative to assets in the divorce, and the divorce decree; and
- d. copies of the 2003 state and federal tax returns along with 55.6 percent of any refunds received.

8. Because the debtor(s) failed to provide the requested information and assets, the trustee has been unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. § 704.

9. The trustee has incurred costs and expenses, including attorney fees in bringing this motion.

10. In order to ensure that the debtor(s) comply with any order issued by the Court as a result of this motion in a timely manner, the trustee requests that the order be specifically made applicable to revocation of the discharge under 11 U.S.C. § 727(a)(6)(A) to allow the trustee to pursue revocation under 727(d)(3) should the debtor(s) not promptly comply with its provisions.

11. This verified motion is based upon all of the files and records herein.

12. Pursuant to Local Rule 9013-2, a separate Memorandum of Facts and Law is submitted with this motion.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing the debtor(s) to turn over to the trustee the following:
  - a. copy of the title to the Chevrolet Avalanche, verification of amount of debt against said vehicle, and turnover of the vehicle to the extent debtor has an interest in said vehicle;
  - b. computation and turnover of accrued, non-exempt wages;
  - c. copies of the stipulation between the debtor and his spouse, the proposed settlement relative to assets in the divorce, and the divorce decree; and
  - d. copies of the 2003 state and federal tax returns along with 55.6 percent of any refunds received.
2. Directing the debtor(s) to complete the turnover of information and assets within 30 days of the entry of an order granting the trustee's motion.
3. Directing that the failure to comply with the order of the Court requiring a turnover and an accounting as provided for herein be grounds for revocation of discharge under 11 U.S.C. 727(a)(6)(A).
4. For costs and attorney fees of \$250.00 in connection with bringing this motion.
5. For such other relief as the Court deems just and equitable.

Dated this 24th day of August, 2004

/e/Charles W. Ries  
Charles W. Ries  
200 Union Square Business Center  
201 North Broad Street  
P. O. Box 7  
Mankato, MN 56002-0007  
Telephone (507) 625-6600  
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Notice of Hearing and Motion for Turnover and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries  
Charles W. Ries



GERALD L. MASCHKA\*  
JOHN M. (JACK) RIEDY\*  
CHARLES W. RIES  
JOHN CHUCK PETERSON  
MARCUS J. CHRISTIANSON\*\*  
RENEE C. RUBISH  
KRISTINE HINDS MACLEAN

PHONE: 507.625.6600

August 26, 2003

Richard H Darby  
Attorney at Law  
PO Box 617  
Winona MN 55987

RE: Brian Kent Larsen  
Bankruptcy No: 03-35040-GFK

Dear Mr. Darby:

Please provide me with the following:

1. Amended schedules that include the debtor's interest in his wife's automobile,
2. Copy of the title to the Chevrolet Avalanche and verification of the amount of debt against the Avalanche,
3. Computation of accrued wages, and a turnover of the non-exempt portion,
4. Copies of the stipulation between the parties and the proposed settlement relative to assets in the divorce,
5. Copy of the divorce decree when it is entered,
6. Copies of the bank statements that cover the date of filing and for 90 days prior, and turnover of the monies in the bank at the date of filing,
7. Offer or turnover on the Buick and the golf clubs, *2002 4950 - ASP*
8. Copies of the 2003 state and federal tax returns when they are filed, and 55.6% of the refunds, if any.

Sincerely,

Charles W. Ries  
cw\_ries@mrr-law.com  
CWR:jra

UNION SQUARE BUSINESS CENTER • SUITE 200  
201 NORTH BROAD STREET • P.O. BOX 7 • MANKATO, MINNESOTA 56002-0007  
PHONE: 507.625.6600 • FAX: 507.625.4002 • E MAIL: mrr-law@mrr-law.com





GERALD L. MASCHKA\*  
JOHN M. (JACK) RIEDY\*  
CHARLES W. RIES  
JOHN CHUCK PETERSON  
MARCUS J. CHRISTIANSON\*\*  
RENEE C. RUBISH  
KRISTINE HINDS MACLEAN  
JORUN GROE MEIERDING  
TANYA M. JOHNSON

September 19, 2003

PHONE: 507.625.6600

Richard H Darby  
Attorney at Law  
PO Box 617  
Winona MN 55987...

RE: Brian Kent Larsen  
Bankruptcy No: 03-35040-GFK

Dear Mr. Darby:

Our bank has advised us that Mr. Larsen's check for \$75 was returned NSF. They will try to rerun it again. If it does not clear, the debtor will need to forward a money order to us for \$75 for the Buick and the golf clubs.

The other items or documentation we are still looking for include the following:

1. Amended schedules that include the debtor's interest in his wife's automobile,
2. Copy of the title to the Chevrolet Avalanche and verification of the amount of debt against the Avalanche,
3. Computation of accrued wages, and a turnover of the non-exempt portion,
4. Copies of the stipulation between the parties and the proposed settlement relative to assets in the divorce,
5. Copy of the divorce decree when it is entered,
6. Copies of the bank statements that cover the date of filing and for 90 days prior, and turnover of the monies in the bank at the date of filing,
7. Copies of the 2003 state and federal tax returns when they are filed, and 55.6% of the refunds, if any.

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September 19, 2003  
Page 2

I would appreciate receiving this information within the next two weeks.

Sincerely,

Charles W. Ries  
cw\_ries@mrr-law.com

CWR:jra



GERALD L. MASCHKA\*  
JOHN M. (JACK) RIEDY\*  
CHARLES W. RIES  
JOHN CHUCK PETERSON  
MARCUS J. CHRISTIANSON\*\*  
RENEE C. RUBISH  
KRISTINE HINDS MACLEAN  
JORUN GROE MEIERDING  
TANYA M. JOHNSON

October 06, 2003

PHONE: 507.625.6600

Richard H Darby  
Attorney at Law  
PO Box 617  
Winona MN 55987

RE: Brian Kent Larsen  
Bankruptcy No: 03-35040-GFK

Dear Mr. Darby:

Our bank has informed us that Mr. Larsen's \$75 check did not clear. Please have him forward to us a money order for \$75 for the Buick and the golf clubs.

I would also appreciate a response to my letter of September 19<sup>th</sup>.

Sincerely,

Charles W. Ries  
cw\_ries@mrr-law.com

CWR:jra

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GERALD L. MASCHKA\*  
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MARCUS J. CHRISTIANSON\*\*  
RENEE C. RUBISH  
KRISTINE HINDS MACLEAN  
JORUN GROE MEIERDING  
TANYA M. JOHNSON

October 22, 2003

PHONE: 507.625.6600

Richard H Darby  
Attorney at Law  
PO Box 617  
Winona MN 55987

RE: Brian Kent Larsen  
Bankruptcy No: 03-35040-GFK

Dear Mr. Darby:

I previously requested the following:

1. Amended schedules that include the debtor's interest in his wife's \_\_\_\_\_ automobile.
2. Copy of the title to the Chevrolet Avalanche and verification of the \_\_\_\_\_ amount of debt against the Avalanche.
3. Computation of accrued wages, and a turnover of the non-exempt portion. \_\_\_\_\_
4. Copies of the stipulation between the parties and the proposed settlement \_\_\_\_\_ relative to assets in the divorce.
5. Copy of the divorce decree when it is entered. \_\_\_\_\_
6. Copies of the bank statements that cover the date of filing and for 90 days \_\_\_\_\_ prior, and turnover of the monies in the bank at the date of filing.
7. Copies of the 2003 state and federal tax returns when they are filed, and \_\_\_\_\_ 55.6% of the refunds, if any.

In addition, Mr. Larsen's check for \$75 for the Buick and golf clubs was returned NSF. Please have the debtor immediately forward a money order for \$75 for the Buick and the golf clubs. ✓

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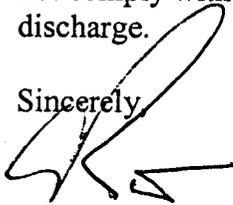
Page 2

Relative to the bank statements, you recently sent me copies of the Merchants Bank statements, however I still need the statements for the Winona National Bank account.

In reviewing the Merchants Bank statements I am having difficulty determining what the deal with the \$2,814.49 is. Was this a bank money order that was issued but then returned and cashed by the debtor? It appears it was a money order that was issued prior to filing, and then returned to the debtor. If this is the case, then the funds would have been an asset of the debtor at the time of the filing and need to be turned over.

I assume with the exception of the 2003 returns and possibly the divorce decree the debtor should be in a position to turn over the balance of the information and funds. If I do not receive the requested information and monies within the next 15 days I intend to initiate a turnover motion. Please remind the debtor if I am required to bring the turnover motion I intend to request the court award my attorney fees. Further if the debtor does not comply with the court's turnover order, I would then intend to proceed to revoke his discharge.

Sincerely,

A handwritten signature in black ink, appearing to be 'Charles W. Ries', written over the word 'Sincerely,'.

Charles W. Ries  
cw\_ries@mrr-law.com

CWR:cv



GERALD L. MASCHKA\*  
JOHN M. (JACK) RIEDY\*  
CHARLES W. RIES  
JOHN CHUCK PETERSON  
MARCUS J. CHRISTIANSON\*\*  
RENEE C. RUBISH  
KRISTINE HINDS MACLEAN•  
JORUN GROE MEIERDING•  
TANYA M. JOHNSON•  
PHONE: 507.625.6600

February 10, 2004

Richard H Darby  
Attorney at Law  
PO Box 617  
Winona MN 55987

RE: Brian Kent Larsen  
Bankruptcy No: 03-35040-GFK

Dear Mr. Darby:

I was under the impression that you would be sending the information that was incomplete in your letter of November 6<sup>th</sup>. I am still waiting for the following information from you:

1. Amended schedules that include the debtor's interest in his wife's automobile.
2. Copy of the title to the Chevrolet Avalanche and verification of the amount of debt against the Avalanche.
3. Copies of the stipulation between the parties, proposed settlement relative to assets in the divorce, and a copy of the divorce decree, if any, or a status update on the progress.
4. Copies of the 2003 state and federal tax return when they are filed, and 55.6% of the refunds, if any.

You asked me to calculate the wages due but I don't see copies of the debtor's pay stubs. I will need the pay stubs for the period immediately prior to and after the date of filing to determine what was owed to the debtor as of the date of filing.

What I was trying to determine in the bank accounts was the deposit/withdrawal of the \$2,814.49. In the Merchant's Bank statements, I see the pattern of the payment being withdrawn then the account was overdrawn so the Bank must have redeposited the money as NSF. This appears to have happened twice on the Merchant's account. In the Winona account it is more difficult to track. Is it possible to get actual bank statements for this account rather than Internet printouts?

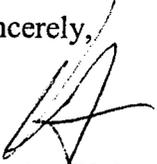
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February 10, 2004  
Page 2

Please have the debtor explain the withdrawals and deposits in the Winona account starting with the \$3,000 on June 3<sup>rd</sup> and 4<sup>th</sup>.

I would appreciate it if the debtor would consider this a priority to get this information turned over in a timely manner.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles W. Ries', written over a horizontal line.

Charles W. Ries  
cw\_ries@mrr-law.com

CWR:ja



GERALD L. MASCHKA\*  
JOHN M. (JACK) RIEDY\*  
CHARLES W. RIES  
JOHN CHUCK PETERSON  
MARCUS J. CHRISTIANSON\*\*  
RENEE C. RUBISH  
JORUN GROE MEIERDING•  
TANYA M. JOHNSON•

PHONE: 507.625.6600

May 13, 2004

Richard H Darby  
Darby Delano & Price  
Attorney at Law  
PO Box 617  
Winona MN 55987

RE: Brian Kent Larsen  
Bankruptcy No: 03-35040-GFK

Dear Mr. Darby:

Enclosed is a copy of my last letter to you dated February 10, 2004. I would appreciate your client's cooperation in closing this file. Please forward all the information and documentation requested as soon as possible.

Sincerely,

Charles W. Ries  
cw\_ries@mrr-law.com

CWR:jra

Enc.

UNION SQUARE BUSINESS CENTER • SUITE 200  
201 NORTH BROAD STREET • P.O. BOX 7 • MANKATO, MINNESOTA 56002-0007  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No: 03-35040-GFK

Brian Kent Larsen,

Debtor(s).

**TRUSTEE'S MEMORANDUM OF FACTS AND LAW  
IN SUPPORT OF MOTION FOR TURNOVER OF PROPERTY**

Charles W. Ries, Chapter 7 trustee, submits the following Memorandum of Facts and Law in Support of Motion for Turnover in the above-captioned case, and as grounds therefore would respectfully show the Court:

FACTS

1. This Chapter 7 case was filed on July 23, 2003, and is pending before this Court.
2. Charles W. Ries was appointed as Chapter 7 trustee on July 24, 2003.
3. The trustee made demand upon the debtor(s) for turnover of information needed to administer the bankruptcy case on August 26, 2003; September 19, 2003; October 6, 2003; October 22, 2003; February 10, 2004; and May 13, 2004, as shown in Exhibit A to the instant motion, and incorporated therein.
4. The debtor(s) failed to supply necessary information to the trustee in response to the turnover demand.
5. The debtor(s) continue to withhold information necessary to conclude administration of the bankruptcy case.

DISCUSSION

1. Turnover of Information.

Bankruptcy debtors receive a substantial benefit when relieved of personal liability for repayment of unsecured obligations through discharge. In achieving a balance between the rights of debtors and their creditors, Congress has determined that debtors have an affirmative duty to turn over information necessary to a complete administration of the bankruptcy case.

Sections 521(3) and (4) of the Bankruptcy Code provide in pertinent part:

[t]he debtor shall -- . . .

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under Section 344 of this title; . . .

The law interpreting the above sections of the Code is well settled concerning a debtor's affirmative obligation to cooperate with the trustee and to supply necessary information for case administration. See: In re: Lange, 110 B.R. 907, 909 (Bankr. D.Minn. 1990); In re: Bentley, 120 B.R. 712, 715 (Bankr. S.D.N.Y. 1990); and In re: Ridley, 115 B.R. 731, 736 (Bankr. D.Mass. 1990).

Due to the debtor(s)' failure to supply necessary information, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtor(s) provide information regarding copy of the title to the Chevrolet Avalanche, verification of amount of debt against said vehicle, and turnover of the vehicle to the extent debtor has an interest in said vehicle; computation and turnover of accrued, non-exempt wages; copies of the stipulation between the debtor and his spouse, the proposed settlement relative to assets in the divorce, and the divorce decree; and copies of the 2003 state and federal tax returns along with 55.6 percent of any refunds received.

## 2. Forfeiture of Discharge.

Under 11 U.S.C. 727(a)(6)(A), the Code provides that if debtors refuse to comply with court orders, discharge of debts may be withheld. In this case the trustee requests that if the trustee's motion is granted, the terms of the order be applicable under 727(a)(6)(A) so that the debtor(s) will have an additional incentive to perform in a timely manner.

Based upon the foregoing the Chapter 7 trustee is entitled to an Order requiring that the debtor(s) turn over non-exempt funds, if any, and information requested in Exhibit A to the Motion so that he may conclude administration of the bankruptcy estate. To expedite resolution of this matter, the trustee requests that the Order be designated a lawful Order pursuant to 11 U.S.C. 727(a)(6)(A).

Dated this 24th day of August, 2004.

/e/Charles W. Ries  
Charles W. Ries  
200 Union Square Business Center  
201 North Broad Street  
P. O. Box 7  
Mankato, MN 56002-0007  
Telephone (507) 625-6600  
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Trustee's Memorandum of Facts and Law in Support of Motion for Turnover with Exhibit A and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries  
Charles W. Ries

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No: 03-35040-GFK

Brian Kent Larsen,

Debtor(s).

**DECLARATION RE: SERVICE BY MAIL**

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 24th day of August, 2004, she served the Notice of Hearing and Motion for Turnover and Trustee's Memorandum of Facts and Law in Support of Motion for Turnover by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Brian Kent Larsen  
RR 3 Box 1895  
Winona, MN 55987

Richard H Darby  
Darby Delano & Price  
PO Box 617  
Winona, MN 55987

United States Trustee  
1015 U S Courthouse  
300 S 4<sup>th</sup> St  
Minneapolis MN 55415

/e/Janet Anderson\_\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:  
Brian Kent Larsen,

Case No: 03-35040-GFK

Debtor(s).

**ORDER**

The above captioned matter came before the Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, on motion by the Chapter 7 trustee Charles W. Ries seeking an order requiring the debtor(s) to turn over information and certain assets.

Charles W. Ries appeared for the trustee. Other appearances are noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

Based upon the files and records, and arguments of counsel,

IT IS HEREBY ORDERED,

1. That the debtor(s) shall turn over to the trustee within thirty (30) days of the entry of this Order:

- a. copy of the title to the Chevrolet Avalanche, verification of amount of debt against said vehicle, and turnover of the vehicle to the extent debtor has an interest in said vehicle;
- b. computation and turnover of accrued, non-exempt wages;
- c. copies of the stipulation between the debtor and his spouse, the proposed settlement relative to assets in the divorce, and the divorce decree; and
- d. copies of the 2003 state and federal tax returns along with 55.6 percent of any refunds received.

2. That this Order shall constitute a lawful Order within the meaning of 11 U.S.C. 727(a)(6)(A) for purposes of discharge revocation should the debtor(s) fail to comply with its terms in a timely manner.

3. That the attorney for the trustee is hereby awarded \$250.00 as and for attorney fees and costs in connection with the motion for turnover. That said award shall be paid to Charles W. Ries as Trustee for the estate within 10 days of entry of this Order.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2004.

---

Honorable Gregory F. Kishel  
United States Bankruptcy Judge