

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

SENDMYGIFT.COM, Inc.,  
Debtor.

Bky. No. 00-35021 (GFK)  
Chapter 11

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SENDMYGIFT.COM, Inc.,  
Plaintiff,

Adv. No. \_\_\_\_\_

v.

**ADVERSARY COMPLAINT**

Daryl A. Shiber, Kimberly G. Shiber,  
DHS Corporation, and K.G.S., LLC  
Defendants.

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For its Adversary Complaint, plaintiff SENDMYGIFT.COM, INC. ("Debtor"), states and alleges as follows:

1. The Petition commencing this Chapter 11 case was filed on December 20, 2000. This case is now pending in this Court. The Debtor is operating its business as a debtor-in-possession. Joe Burnett is the president of the Debtor.

2. The Court has jurisdiction over this case under 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 1070-1. This Complaint is filed under 11 U.S.C. §§ 542.

3. This is a core proceeding.

4. Venue is proper in this Court under 28 U.S.C. § 1409.

5. This action seeks turnover of money, or a money judgment against defendants for \$53,000 arising from loans made by plaintiff to defendants. This action also seeks damages for libel *per se*.

**DEFENDANT PARTIES**

6. Defendant DHS Corporation is a corporation controlled by Daryl Shiber.

7. Defendants Daryl A. Shiber and Kimberly G. Shiber are husband and wife.

8. Defendant K.G.S., LLC is a Minnesota limited liability company, of which Kimberly G. Shiber is one of two owners. K.G.S., LLC is controlled largely by Daryl A.

Shiber.

## **FACTS**

9. On May 31, 2001, K.G.S., LLC purchased an office building at 12345 Portland Avenue in Burnsville, Minnesota [the "Property"] from plaintiff for \$2.4 million.

10. As part of the financing for the transaction, K.G.S., LLC assumed plaintiff's mortgage in the original amount of \$1,125,000 on the Property with Premier Bank [the "Mortgage"], and agreed to refinance the Mortgage by December 1, 2001.

11. After the closing of the transaction, plaintiff remained liable with K.G.S., LLC on the Mortgage.

12. K.G.S., LLC did not refinance the Mortgage by December 1, 2001.

13. From December of 2001 through March of 2002, K.G.S., LLC was delinquent, or about to become delinquent, in its monthly payments owing on the Mortgage to Premier Bank.

14. Plaintiff believed that the Mortgage payments needed to be kept current in order for K.G.S., LLC to refinance the property so the Plaintiff would be released from further liability on the Mortgage.

15. In order to avoid default on the Mortgage, plaintiff gave three checks to Defendants, attached hereto as Exhibits A, B and C. The first check is dated December 19, 2001 and payable to D.H.S. Corp. in the amount of \$19,000. The second check is dated January 9, 2002 and payable to Darrel Schieber in the amount of \$19,000. The third check is dated March 1, 2002 and payable to Kim Shiber in the amount of \$15,000.

16. Plaintiff gave the checks to defendants as loans to enable K.G.S., LLC to make monthly payments on the Mortgage to Premier Bank.

17. Defendants cashed these checks and, on information and belief, applied the proceeds to payment of the Mortgage with Premier Bank.

18. Defendant agreed to repay plaintiff the sum of these checks upon the refinance of the Mortgage.

19. K.G.S., LLC refinanced the Mortgage not long after March 1, 2002, but did not repay plaintiff.

20. Plaintiff's president, Joe Burnett, met with Mr. Shiber many times to demand payment. Mr. Shiber admitted owing the debt, but has not paid.

21. During the summer of 2003, Darrell Shiber filed a false insurance report and a false police report alleging that plaintiff and its president, Joseph Burnett, had stolen computers and office furniture valued in excess of \$600,000 from his office building at 12345 Portland Avenue.

22. Plaintiff and Mr. Burnett did remove plaintiff's computers and office

equipment from 12345 Portland Avenue during 2003.

23. Such personal property belonged to plaintiff and had never been sold to any of Defendants.

### **COUNT ONE**

24. Defendants owe plaintiff the sum of Fifty Three Thousand (\$53,000.00) Dollars for repayment of loans.

25. Alternatively, defendant Daryl A. Shiber owes plaintiff Nineteen Thousand (\$19,000.00) Dollars, defendant Kimberly G. Shiber owes plaintiff Fifteen Thousand (\$15,000.00) Dollars, defendant DHS Corporation owes plaintiff Nineteen Thousand (\$19,000.00) Dollars, and defendant K.G.S., LLC owes plaintiff Fifty Three Thousand (\$53,000.00) Dollars for repayment of loans.

### **COUNT TWO**

26. Defendants owe plaintiff the sum of Fifty Three Thousand (\$53,000.00) Dollars for sums advanced by plaintiff to enable defendants to pay their mortgage obligations.

27. Alternatively, defendant Daryl A. Shiber owes plaintiff Nineteen Thousand (\$19,000.00) Dollars, defendant Kimberly G. Shiber owes plaintiff Fifteen Thousand (\$15,000.00) Dollars, defendant DHS Corporation owes plaintiff Nineteen Thousand (\$19,000.00) Dollars, and defendant K.G.S., LLC owes plaintiff Fifty Three Thousand (\$53,000.00) Dollars for sums advanced by plaintiff to enable defendants to pay their mortgage obligations.

### **COUNT THREE**

28. Defendant Daryl A. Shiber owes plaintiff an amount of damages to be determined at trial for libel *per se*, and for its costs incurred in dealing with the false statements and false reports made by Defendant Daryl A. Shiber.

29. Plaintiff is entitled to punitive damages from Defendant Daryl A. Shiber, in an amount to be determined at trial, for libel *per se*.

**WHEREFORE**, the Debtor prays that this Court make and enter its order:

1. Directing Defendants to turn over Fifty Three Thousand (\$53,000.00) Dollars to Plaintiff, plus interest at the statutory rate.
2. Awarding judgment against defendants for the sum of Fifty Three Thousand (\$53,000.00) Dollars plus interest; or alternatively;
3. Awarding judgment against defendant Daryl A. Shiber for Nineteen Thousand (\$19,000.00) Dollars plus interest, against defendant Kimberly G. Shiber for Fifteen Thousand (\$15,000.00) Dollars plus interest,

defendant DHS Corporation for Nineteen Thousand (\$19,000.00) Dollars plus interest, and defendant K.G.S., LLC for Fifty Three Thousand (\$53,000.00) Dollars plus interest;

4. Awarding ordinary damages and punitive damages to be determined at trial for libel *per se* and filing of false insurance and false police reports.
5. Awarding interest at the statutory rate from March 1, 2002, plus its costs and disbursements herein and such other relief as the Court finds just and equitable.
6. Awarding such other and further relief as is just.

Dated: January 27, 2004.

-e- David Hoiland  
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