

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

**In re:
Bonita K Wiech,**

Debtor.

Bky Case No.: 04-30420

Chapter 7

**Bank One Delaware, NA f.k.a. First USA,
Plaintiff,**

Adv. Pro. No. _____

vs.

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT**

Bonita K Wiech,

Defendant.

**Bank One Delaware, NA f.k.a. First USA, by and through its counsel David
Hoiland, hereby represents as follows:**

- 1. The Court has jurisdiction to hear this complaint pursuant to 28 U.S.C. 157(a), (b)(1), (b)(2)(I) (core proceeding), 1334(b), and 11 U.S.C. 523(c).**
- 2. On 01/23/2004, Defendant filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.**
- 3. Plaintiff is the holder of an unsecured claim against Defendant arising from credit card account number 4417121150932682 and 4246311916004028.**
- 4. Regarding account number 4417121150932682 between 07/23/2003 and 07/25/2003, the Defendant accumulated in excess of \$26,500.00 in cash advances and/or convenience check charges toward this account.**

Regarding account number 4246311916004028 between 10/10/2003 and 12/20/2003 the Defendant accumulated \$2,840.00 in retail charges and \$1,500.00 in cash advances and/or convenience check charges.

- 5. By the date the bankruptcy was filed, Defendants owed \$40,977.54 on this account.**
- 6. Use of a credit card account constitutes an implied promise that the Defendants have the intention and ability to repay.**
- 7. Plaintiff relied upon Defendant express and implied representation of present intent and ability to repay.**
- 8. Accordingly, Plaintiff is entitled to judgment that this debt is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A).**
- 9. The Cardholder Agreement in effect between the parties requires Defendant to pay costs of collection, including reasonable attorney fees.**

WHEREFORE, Bank One Delaware, NA f.k.a. First USA, prays for judgment as follows:

- A. For money judgment against Defendant jointly and severally in the amount \$30,840.00 as of 07/25/2003;**
- B. That the Court except from discharge its claim against Defendants in the amount of \$30,840.00 plus interest, finance charges and attorney fees in accordance with the Cardholder Agreement of the parties; and**

C. That the Court order such other such relief as it may deem appropriate.

Respectfully submitted,

/e/David Jon Hoiland
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