

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7

Allen Gregory Enger, aka Al Enger
Patricia Rose Enger, fka Patricia Evans,

BKY NO: 03-36761-DDO

Debtor(s).

ADV NO: _____

Charles W. Ries, Trustee,

Plaintiff,

vs.

COMPLAINT

Dan Haaland
dba Haaland Furniture and Cabinet Company,

Defendant.

Charles W. Ries, trustee for the above-captioned bankruptcy estate, as and for his complaint against the Defendant states as follows:

I.

The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (F), and this adversary proceeding arises in and relates to the bankruptcy estate of Allen Gregory Enger and Patricia Rose Enger (“Debtors”). Debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code on October 3, 2003 and the matter is now pending before this Court.

II.

Charles W. Ries (“Trustee”) is the duly appointed and acting trustee of the above-captioned bankruptcy estate pursuant to appointment dated October 6, 2003.

III.

This proceeding is a core proceeding under 28 U.S.C. §§ 157(b)(2)(F), (K), and (O). This action is brought pursuant to Federal Rules of Bankruptcy Procedure 7001 et seq., and Local Rules 7004-2 et seq. This cause of action arises under 11 U.S.C. §§ 547 and 551.

IV.

Dan Haaland (“Defendant”) is an individual who owns Haaland Furniture and Cabinet Company, a furniture and cabinetry company based out of Clarkfield, Minnesota.

V.

Prior to the bankruptcy filing Defendant alleged Debtors owed Defendant \$6,599.00 for the installation of cabinetry in the home of the debtors.

VI.

On March 6, 2003, Defendant filed a Notice of Mechanics Lien for \$6,599.00 against the Debtor’s residence located at 115 Prairie Avenue Southwest, Hanley Falls, Minnesota.

VII.

The noticed mechanics lien was filed more than 120 days after the last day Defendant contributed labor or materials to the property and accordingly any lien had lapsed and the notice was improperly filed.

VIII.

Defendant subsequently received payment of approximately \$6,599.00 from Debtors and on or about July 23, 2003.

IX.

The Defendant’s receipt of payment within 90 days of the Debtors’ bankruptcy filing is a preference.

X.

That at all times relevant, the Debtors were insolvent.

XI.

That the payment of \$6,599.00 to the Defendant was:

- (1) to or for the benefit of a creditor;
- (2) on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made on or within 90 days before the date of the filing of the petition;
- (5) which enables the Defendant to receive more than it would have received pursuant to a distribution under Chapter 7 if the transfer had not been made and Defendant would have received payment to the extent provided for by Title 11 of the Bankruptcy Code.

XII.

The Trustee has requested the Defendant voluntarily turnover the preferential payment and the Defendant has refused to do so.

WHEREFORE, the undersigned requests an order of the court:

1. That the payment in the amount of approximately \$6,599.00 constitutes a transfer of an interest in property of the Debtor and a preference under 11 U.S.C. §547.
2. Awarding judgment against the Defendant in the amount of \$6,599.00.
3. Awarding costs and disbursements.
4. Granting such other relief as is just and proper.

ACKNOWLEDGMENT: The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney fees may be awarded pursuant to Minn. Stat. § 549.21, Subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated this 3rd day of May, 2004.

/e/ Charles W. Ries
Charles W. Ries # 12767X
MASCHKA, RIEDY & RIES
Attorneys for Plaintiff
201 North Broad Street, Suite 200
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600

Verification: I, Charles W. Ries, the moving party named in the foregoing Complaint, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on May 3, 2004

Signed: /e/ Charles W. Ries
Charles W. Ries
PO Box 7
Mankato MN 56002-0007