

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7

Helen A. St. John,

BKY NO: 02-94125-DDO

Debtor,

ADV NO: _____

Charles W. Ries, Trustee,

Plaintiff,

vs.

COMPLAINT

Karen Solomon,

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)(F), and this adversary proceeding arises in and relates to the bankruptcy estate of Helen A. St. John. Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code on December 10, 2002, 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 December 11, 2002.

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, 549, 550 and 551.

IV.

Debtor is an individual residing Waseca County, Minnesota.

V.

On October 31, 2002, prior to the bankruptcy filing, Debtor closed on the sale of her home. After closing costs and lien payoffs were subtracted from the sale proceeds, Debtor should have received cash in the amount of \$4437.02 as a result of the sale; however, Debtor received nothing.

VI.

Instead, the closing company paid the \$4437.02 to Defendant, Karen Solomon, who is Debtor's niece by marriage. Defendant also resides in Waseca County, Minnesota.

VII.

Defendant allegedly advanced money to Debtor to install a new septic system on Debtor's property prior to the sale. Defendant's loan to Debtor was unsecured.

VIII.

That at all times relevant, Debtor was insolvent.

IX.

That the payment of \$4437.02 to 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.

X.

The Trustee has a right, pursuant to 11 U.S.C. §550, to recover the transfer of the value of such property transferred to Defendant.

XI.

The Trustee has requested Defendant to voluntarily turn over the monies received and Defendant has refused to answer such inquires.

WHEREFORE, the undersigned requests an order of the court:

1. That the payment in the amount of **\$4437.02** constitutes a transfer of an interest in property of the Debtor and a preference under 11 U.S.C. §547.
2. Awarding judgment against Defendant in the amount of **\$4437.02**.
3. Awarding costs and disbursements, including attorney fees.
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
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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