

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Bky. No: 02-94125-DDO

Adv. No: 04-3246

Helen A. St. John,

Debtor.

Charles W. Ries, Trustee,

Plaintiff,

v.

Karen Solomon,

Defendant.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT**

The above-entitled matter came before the Honorable Dennis D. O'Brien, Judge of Bankruptcy Court upon documents filed by Charles W. Ries, Trustee. An Affidavit of No-Answer has been duly filed by the Plaintiff indicating the Defendant is in default. Based upon the complete file, records and proceedings herein, the Court issues the following Findings of Fact, Conclusions of Law and Order for Judgment.

FINDINGS OF FACT

1. This adversary proceeding arises in and relates to the bankruptcy estate of Helen A. St. John ("Debtor"). Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code on December 10, 2002, and that matter is now pending before this Court.

2. Charles W. Ries ("Trustee") is the duly appointed and acting trustee of the above-captioned bankruptcy estate pursuant to appointment dated December 11, 2002.

3. Debtor is an individual residing in Waseca County, Minnesota.

4. 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 sales proceeds, Debtor should have received cash in the amount of \$4,437.02 as a result of the sale; however, Debtor received nothing.

5. Instead, the closing company paid the \$4,437.02 to Defendant, Karen Solomon, (“Defendant”) who is the Debtor’s niece by marriage. Defendant also resides in Waseca County, Minnesota.

6. 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.

7. That at all times relevant, Debtor was insolvent.

8. That the payment of \$4,437.02 to Defendant was:

- (a.) to or for the benefit of a creditor;
- (b.) on account of an antecedent debt owed by the debtor before such transfer was made;
- (c.) made while the debtor was insolvent;
- (d.) made on or within 90 days before the date of filing of the petition;
- (e.) 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.

9. 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.

10. The Trustee has requested Defendant to voluntarily turn over the monies received and Defendant has refused to answer such inquiries, and accordingly the trustee initiated an adversary action by Complaint dated May 3, 2004. The Summons was issued on May 3, 2004, and the Summons and Complaint were served on the Defendant, both by certified mail return receipt requested and first class mail, on May 3, 2004.

11. The certified mail was returned to the Plaintiff as unclaimed.

12. The first class mail was not returned to the Plaintiff.

13. There has been no answer to the Summons and Complaint despite the period of time for answering the Complaint having run.

14. The amount requested is past due and owing to the bankruptcy estate.

15. That the trustee has a right to recover the transfer as a preference received within 90 days of the filing of a bankruptcy case.

16. That the trustee has requested that Defendant voluntarily turn over the transferred funds for administration as a part of the bankruptcy estate, and that as of the filing of this Adversary Proceeding, Defendant has failed and refused to do so.

17. That the trustee has incurred fees and costs in bringing this adversary proceeding.

CONCLUSIONS OF LAW

It is hereby concluded that Plaintiff, Charles W. Ries, is entitled to judgment against Defendant, Karen Solomon, in the amount of \$4,437.02, together with costs and disbursements herein.

ORDER FOR JUDGMENT

Based upon the pleadings and attached affidavits it is ordered that plaintiff is granted judgment against the Defendant in the amount of \$4,437.02, plus costs of \$150.00, for a total of \$4,587.02.

Dated this 29th day of September, 2004.

/e/ Dennis D. O'Brien

Honorable Dennis D. O'Brien
Judge of Bankruptcy Court

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 09/30/04 Lori A. Vosejka, Acting Clerk, By DLR
--

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Doretta Raymond, hereby certify: That I am the Judicial Assistant for Judge Dennis D. O'Brien of the United States Bankruptcy Court for the Third Division of the District of Minnesota, at St. Paul, Minnesota; that on September 30, 2004, true and correct copies of the annexed **ORDER** were placed by me in individually stamped official envelopes; that said envelopes were addressed individually to each of the persons, corporations, and firms at their last-known addresses appearing hereinafter; that said envelopes were sealed and on the day aforementioned were placed in the United States mails at St. Paul, Minnesota, to:

U. S. TRUSTEE
1015 U. S. COURTHOUSE
300 SO. 4th STREET
MINNEAPOLIS, MN 55415

CHARLES W RIES ESQ
MASCHKA RIEDY & RIES, PLLP
PO BOX 7
MANKATO MN 56002-0007

KAREN SOLOMON
600 370TH AVE
JANESVILLE MN 56048

and this certificate is made by me.

/e/Doretta Raymond