

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Bankruptcy 04-32132
Chapter 7 Case
Adversary

Lawrence E. Weber,

Debtor,

Michael J. Iannacone,
Trustee

COMPLAINT

Plaintiff,

vs.

MJF Masonry and Concrete, Inc.,

Defendant.

Now comes forth Michael J. Iannacone for his Complaint states and alleges:

1. Plaintiff is the duly appointed, qualified and acting Trustee of the estate of the above named debtor.
2. That on April 7, 2004 debtor filed a petition under Chapter 7 of Title 11 of the United States Code.
3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 541, 547, 550 and 551. This is a core proceeding.
4. Defendant, MJF Masonry and Concrete, Inc. is doing business at 16040 Jeffrey Avenue, Hugo, MN 55038 and may be served at such address.

5. That on or about August 5, 2003, Judgment was entered in the County of Ramsey, District Court against Debtor Lawrence E. Weber and in favor of MJF Masonry and Concrete, Inc. in the amount of \$4,330.00. Said Judgment was docketed September 10, 2003.
6. TCF National Bank received a third party levy from Defendant on March 16, 2004 who removed \$2,384.12 from the accounts of the Debtor, Lawrence E. Weber and placed said funds into a TCF holding account.
7. On or about April 27, 2004, TCF Bank turned said funds over to the Chapter 7 Trustee and Plaintiff herein.
8. The third party levy on March 16, 2004 constitutes a transfer under 11 U.S.C. §547 and was:
 - a. To and for the benefit of Defendant, which was a creditor of the debtor;
 - b. For and on account of an antecedent debt owed by the debtor before said transfer was made;
 - c. Made while the debtor was insolvent;
 - d. Made within ninety (90) days prior to the date of the filing of the petition of the debtor under Title 11 in this case;
 - e. And enabled Defendant to receive more than Defendant would have received if the transfer or payment had not been made and Defendant received payment on such debt to the extent provided by Title 11.
9. That pursuant to 11 U.S.C. § 547 the trustee may avoid the transfer set forth in paragraph 6 above. That pursuant to 11 U.S.C. § 551, any transfer avoided by the trustee

pursuant to 11 U.S.C. § 547 is preserved for the benefit of the debtor estate. That the claim set forth herein constitutes property of the debtor bankruptcy estate pursuant to 11 U.S.C. § 541.

10. That 11 U.S.C. § 550 provides that in the event the transfer is avoided by the trustee pursuant to 11 U.S.C. § 547, the trustee may recover for the benefit of the bankruptcy estate the property transferred.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. Voiding the transfer pursuant to the third party levy on March 16, 2004 in the amount of \$2,384.12.
- b. Granting Plaintiff Judgment against Defendant in the amount of \$2,384.12;
- c. For Plaintiff's attorney's fees;
- d. For Plaintiff's costs and disbursements herein; and
- e. For such other and further relief as the Court deems just and equitable in the premises.

Dated: July 21, 2004

 /e/ Michael J. Iannacone
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