

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-33467 - GFK

Jeanne L. Smith,

Debtor.

John A. Hedback, Trustee,

Plaintiff,

ADV 04-3346

vs.

Fabulous Floors, Inc.,

**NOTICE OF HEARING AND
MOTION FOR DEFAULT
JUDGMENT**

Defendant.

1. John A. Hedback, trustee (hereinafter "Plaintiff") hereby moves the Court for an order entering default judgment.

I. NOTICE OF HEARING

2. The Court will hold a hearing on this motion in Courtroom 228B, 228 Federal Building, 316 North Robert Street, St. Paul, Minnesota on September 28, 2004, at 11:30 a.m., or as soon thereafter as counsel can be heard.

3. Any response to this motion shall be filed and delivered no later than September 23, 2004, at 11:30 a.m. which is three (3) days before the hearing date, or filed and mailed no later than September 17, 2004, which is seven (7) days before the hearing date. Failure to file a written response may result in the Court granting the motion without hearing any response.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. Sections 1334 and 157 and Bankruptcy Rule 7055. This motion is filed under Bankruptcy Rule 7055 and 9013 and Local Rules 1202 through 1204 inclusive. This proceeding arises under 11 U.S.C. Section 548. On May 13, 2003, Jeanne L. Smith (Debtors) filed a voluntary Chapter 7 petition in bankruptcy, thereby commencing the above-reference case. The case is still pending.

5. John Hedback was appointed trustee.

6. On or about August 5, 2004, Plaintiff filed this adversary proceeding. This proceeding is still pending before this Court.

II. MOTION

7. Plaintiff moves the Court for an order (1) determining that Defendant was served with the Summons and Complaint in the manner required by the rules; that Defendant failed to interpose a defense; that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law; (2) determining that Defendant received a fraudulent transfer in the amount of \$60,000.00; (3) avoiding said fraudulent transfer; (4) granting judgment in favor of the Plaintiff recovering the sum of \$60,000.00 for the benefit of the bankruptcy estate; (5) **granting judgment in favor of the Plaintiff for his costs of the \$150 filing fee**; and (6) granting any other relief the Court deems just and proper.

8. In support of this motion, Plaintiff relies on the filed pleadings and the memorandum of law and affidavits filed contemporaneously herewith.

WHEREFORE, the Plaintiff requests an order as follows:

(1) Determining that Defendant was served with the Summons and Complaint in the manner required; that Defendant failed to interpose a defense; that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law;

(2) Determining that the transfer of the sum of \$60,000.00 to Defendant constitutes a fraudulent transfer within the meaning of Section 548 of the Bankruptcy Code;

(3) Granting judgment in favor of the Plaintiff recovering the sum of \$60,000.00 for the benefit of the bankruptcy estate; and

(4) Granting any other relief the Court deems just and proper.

Hedback, Arendt & Carlson, PLLC

Dated: September 14, 2004

_____/e/ Jennifer L. Neska_____
Jennifer L. Neska, #312381
Peggy J. Hedback, #142451
John A. Hedback, #142438
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418
(612) 789-1331
Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-33467

Jeanne L. Smith,

Debtor.

John A. Hedback, Trustee,

Plaintiff,

ADV 04-3346

vs.

Fabulous Floors, Inc.,

AFFIDAVIT

Defendant(s).

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

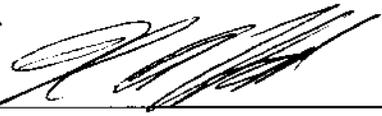
I, John A. Hedback, being first duly sworn upon oath, depose and state as follows:

1. I am the duly-appointed and acting trustee (Plaintiff or Trustee) and have knowledge of the facts set forth in this Affidavit.
2. On May 13, 2003, Jeanne L. Smith (Debtor) filed a voluntary Chapter 7 petition in bankruptcy, thereby commencing the above-reference case. The case is still pending.
3. The Debtor's records indicate that on July 5, 2001, Debtor transferred property to Defendant having a value of \$60,000.00.
4. On or about August 5, 2004, Plaintiff caused this adversary proceeding to be filed.
5. Plaintiff caused the Summons and Complaint to be served as required. **Attached hereto are copies of the return receipt that was signed by J. O=Neal.**
6. The time period for filing and serving an answer expired September 4, 2004.

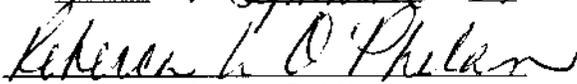
8. This Affidavit is executed by Plaintiff in accordance with Bankruptcy Rule 7055 for the purpose of enabling Plaintiff to obtain entry of default judgment against Defendant.

FURTHER YOUR AFFIANT SAYETH NOT.

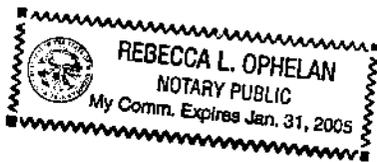
Dated: 9/10/04



John A. Hedback, Trustee

Subscribed and sworn to before me
this 10th day of September, 2004.


Notary Public



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FABULOUS FLOORS, INC
 JEANNE L. SMITH
 8320 F CITY CENTRE DR
 WOODBURY, MN 55125

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 X *J. O'Neil* Addressee

B. Received by (Printed Name) C. Date of Delivery
J. O'Neil 8/2/04

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

7004 0550 0000 0702 5452

3 ADV 8/5/04 114901

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FAB FLOORS OF WOODBURY
 JEANNE L. SMITH
 8320 F CITY CENTRE DR
 WOODBURY, MN 55125

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 X *J. O'Neil* Addressee

B. Received by (Printed Name) C. Date of Delivery
J. O'Neil 8/2/04

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

7004 0550 0000 0702 5469

8/5 ADV

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-33467 - GFK

Jeanne L. Smith,

Debtor.

John A. Hedback, Trustee,

Plaintiff,

ADV 04-3346

vs.

Fabulous Floors, Inc.,

AFFIDAVIT OF IDENTIFICATION, NON-
MILITARY STATUS, NON-INFANCY AND
COMPETENCY

Defendant(s).

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

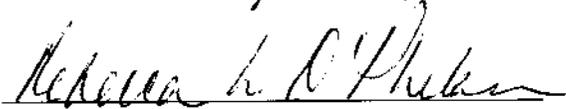
I, John A. Hedback, being first duly sworn upon oath, depose and state as follows:

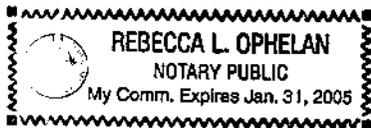
1. I am the duly appointed and acting trustee (Affiant, Plaintiff or Trustee) and have knowledge of the facts set forth in this Affidavit.
2. The Defendant's legal name is as follows: Fabulous Floors, Inc. Ndba Fab Floors of Woodbury. The current address of Defendant is the following: 8320F City Centre Drive, Woodbury, MN 55125.
3. Defendant is not now, as Affiant verily believes, in the military service of the United States of America.
4. Defendant is not an infant and is competent within the meaning of the Rules of Civil Procedure.
5. Plaintiff makes this Affidavit in accordance with Bankruptcy Rule 7055 and Local Rule 1105 for the purpose of enabling Plaintiff to obtain entry of default judgment against Defendant for its failure to answer or otherwise defend this adversary proceeding.

Dated: 9-10-04


John A. Hedback, Trustee

Subscribed and sworn to before me
this 10th day of September, 2004


Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-33467 - GFK

Jeanne L. Smith,

Debtor.

John A. Hedback, Trustee,

Plaintiff,

ADV 04-3346

vs.

Fabulous Floors, Inc.,

MEMORANDUM OF LAW

Defendant(s).

Plaintiff submits this Memorandum of Law in support of his Motion for Default Judgment.

I. STATEMENT OF FACTS

Plaintiff relies on the statements of facts set forth in the Motion for Default Judgment, together with his Affidavit and the Affidavit of Identification, Non-Military Status, Non-infancy and Competency, and incorporates same herein.

II. STATEMENT OF LAW AND ARGUMENT

Bankruptcy Rule 7055, which incorporates Rule 55 of the Federal Rules of Civil Procedure, provides that default judgment may be entered when a party against whom a judgment for affirmative relief is sought, fails to plead or otherwise defend as provided by the rules.

Section 548 of the Bankruptcy Code provides that the trustee may avoid a transfer of property made within a year prior to the filing for which the Debtor received less than reasonable equivalent value.

The Defendant was served with the Summons and Complaint as required. **Attached to the Affidavit of John A. Hedback are copies of the return receipt signed by J. O=Neal.**

The Debtor transferred property to Defendant worth \$60,000.00. Demand has been made by the Trustee for this sum. No amount of that has been paid.

Plaintiff asks this Court to enter default judgment against the Defendant avoiding the transfer of the sum of \$60,000.00 and preserving same for the benefit of the estate.

Respectfully submitted,

Hedback, Arendt & Carlson, PLLC

Dated: September 14, 2004

_____/e/ Jennifer L. Neska_____

Jennifer L. Neska, # 312381

Peggy J. Hedback, #142451

John A. Hedback, #142438

2855 Anthony Lane South, Suite 201

St. Anthony, MN 55418

(612) 789-1331

Attorneys for Plaintiff

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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Jeanne L. Smith,

Debtor.

John A. Hedback, Trustee,

ADV 04-3346

vs.

Fabulous Floors, Inc.,

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Defendant.

The undersigned, being an employee of Hedback, Arendt & Carlson, PLLC, attorneys licensed to practice law in this Court, with offices located at 201 Anthony Place, 2855 Anthony Lane South, St. Anthony, MN 55418, declares that on the date indicated below, I served the following:

1. Notice of Hearing and Motion for Default Judgment;
2. Affidavit;
3. Affidavit of Identification, Non-Military Status, Non-Infancy and Competency;
4. Memorandum of Law;
5. Proposed Order; and
6. Unsworn Declaration for Proof of Service

upon each of the entities named below by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at Roseville, Minnesota, addressed to each of them as follows:

Fabulous Floors, Inc.
Jeanne L. Smith
8320F City Centre Dr
Woodbury, MN 55125

Fab Floors of Woodbury
Jeanne L. Smith
8320F City Centre Dr
Woodbury, MN 55125

Office of United States Trustee
1015 US Courthouse

300 South Fourth Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 14, 2004

_____/e/ Becky O'Phelan_____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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BKY 03-33467 - GFK

Jeanne L. Smith,

Debtor.

John A. Hedback, Trustee,

Plaintiff,

ADV 04-3346

vs.

Fabulous Floors, Inc.,

**ORDER FOR
DEFAULT JUDGMENT**

Defendant(s).

This proceeding came before the Court for hearing on motion by the Plaintiff for entry of default judgment. Appearances were noted on the record. Upon review of the file and the pleadings before the Court, it appears to the Court that Defendant was served with the Summons and Complaint; that Defendant has failed to interpose a defense; that there is no genuine issue as to any material fact; and that Plaintiff is entitled to judgment as a matter of law.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiff's motion for default judgment is granted.
2. Debtor transferred property to Defendant valued at \$60,000.00.
3. The fraudulent transfer is hereby avoided for the benefit of the creditors pursuant to Section 548 of the Bankruptcy Code.
4. Pursuant to Section 548 of the Bankruptcy Code, Plaintiff shall have judgment against Defendant for the sum of \$60,000.00.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT

Dated: _____

U.S. Bankruptcy Judge