

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 03-35273 - GFK

Normandale Pro Shop, Inc.,

Debtor.

-----  
John A. Hedback, Trustee,

Plaintiff,

ADV 04-3347

vs.

Highlander Logo Products Corp.,

**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 July 31, 2003, Normandale Pro Shop, Inc. (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 \$23,081.00; (3) avoiding said fraudulent transfer; (4) granting judgment in favor of the Plaintiff recovering the sum of \$23,081.00 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 \$23,081.00 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 \$23,081.00 for the benefit of the bankruptcy estate;

(4) **Granting judgment in favor of the Plaintiff for his costs of the \$150 filing fee**; and

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

Hedback, Arendt & Carlson, PLLC

Dated: September 14, 2004

\_\_\_\_\_/s/ 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 03-35273

Normandale Pro Shop, Inc.,

Debtor.

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John A. Hedback, Trustee,

Plaintiff,

ADV 04-3347

vs.

Highlander Logo Products Corp.,

**AFFIDAVIT**

Defendant(s).  
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STATE OF MINNESOTA    )  
  )ss  
COUNTY OF HENNEPIN    )

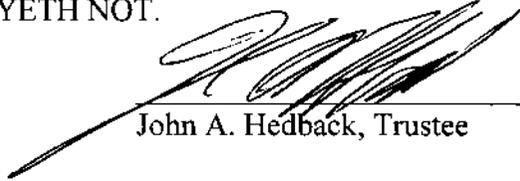
I, John A. Hedback, being first duly sworn upon oath, depose and state as follows:

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 July 31, 2003, Normandale Pro Shop, Inc. (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 March 21, 2003 and on April 8, 2004, Debtor transferred property to Defendant having a value of \$581.00 and \$22,500.00, for a total amount of \$23,081.00.
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 is a copy of the return receipt that was signed by E. Commisso.**
6. The time period for filing and serving an answer expired September 4, 2004.
7. No answer has been interposed in this proceeding.

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.

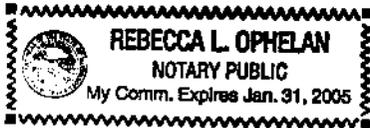
FURTHER YOUR AFFIANT SAYETH NOT.

Dated: 9-16 04

  
\_\_\_\_\_  
John A. Hedback, Trustee

Subscribed and sworn to before me  
this 16<sup>th</sup> day of September, 2004.

Rebecca L. O'Phelan  
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:

HIGHLANDER LODGE  
 ATTN: ROBERT M. STEFANCIN  
 SCHOTTENSTEIN, 70~~0~~ # DUNN  
 US BANK CENTER AT PLAYHOUSE  
 SQUARE  
 1350 EUCLID AVE STE 1400  
 CLEVELAND, OH 44115

7004 0550 0000 0702 5438

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 Agent  
 Addressee  
*E. Commissa*

B. Received by (Printed Name) C. Date of Delivery  
*E. Commissa 2-9*

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

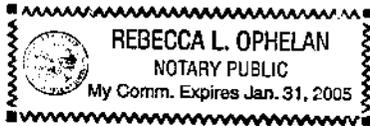
*8/15/04*  
*Normandale HOV*



John A. Hedback, Trustee

Subscribed and sworn to before me  
this 10<sup>th</sup> day of September, 2004.

Rebecca L. O'Phelan  
Notary Public



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

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Normandale Pro Shop, Inc.,

Debtor.

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John A. Hedback, Trustee,

Plaintiff,

ADV 04-3347

vs.

Highlander Logo Products Corp,

**MEMORANDUM OF LAW**

Defendant(s).  
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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 is a copy of the return receipt signed by E. Comisso.**

The Debtor transferred property to Defendant worth \$23,081.00. 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 \$23,081.00 and preserving same for the benefit of the estate.

Respectfully submitted,

Hedback, Arendt & Carlson, PLLC

Dated: September 14, 2004

\_\_\_\_\_/s/ 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

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Attorneys for Plaintiff

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**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:

Highlander Logo Products Corp's attorney

Robert M. Stefancin  
Schottenstein, Zox, and Dunn  
US Bank Center at Playhouse Square  
1350 Euclid Avenue, Suite 1400  
Cleveland, OH 44115

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/ Jennifer L. Neska

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John A. Hedback, Trustee,

Plaintiff,

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Highlander Logo Products Corp,

**ORDER FOR  
DEFAULT JUDGMENT**

Defendant(s).  
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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 \$23,081.00.
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 \$23,081.00, plus Plaintiff's costs of \$150.00, for a total sum of \$23,231.00.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT

Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. Bankruptcy Judge