

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Mark Stephen Bjorkstrand and
Theresa Marie Bjorkstrand

Debtors.

BKY No. 03-37845
ADV No. 04-
Chapter 7

Patti J. Sullivan, Trustee,

Plaintiff,

vs.

James Bjorkstrand,

Defendant.

COMPLAINT

Patti J. Sullivan, Trustee (“Trustee”) of the Bankruptcy Estate of Mark Stephen Bjorkstrand and Theresa Marie Bjorkstrand, (“Debtors”) as and for her Complaint against James Bjorkstrand (“Defendant”), states and alleges as follows:

1. Trustee is the duly appointed Chapter 7 Trustee of the bankruptcy estate of the Debtor.
2. This bankruptcy case was commenced on November 18, 2003, by the filing of a voluntary Chapter 7 petition.
3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).
4. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334. This case arises under 11 U.S.C. §§ 548 and 551.

5. On or about October 5, 2001, the Debtors and the Defendant purchased the following real property situated in Dakota county, Minnesota, commonly referred to as 2087 Garnet Lane, City of Eagan (“Purchase”) and legally described as follows:

Lot Nine (9), Block Five (5), Cedar Grove No. 1, Dakota County, Minnesota
 (“Property”)

6. That the purchase price for the Property was \$149,900.00.
7. The Debtors paid \$1,000.00 to Assist 2 Sell as earnest money which was applied to the purchase price of the Property.
8. The Debtors paid an additional \$7,653.91 at closing, including \$7,118.65 in settlement charges and \$285.26 in county taxes, with the remaining \$250.15 apparently applied to the purchase price of the Property.
9. That, upon information and belief, on or about October 5, 2001, the Debtors and the Defendant signed a mortgage in the original principal amount of \$148,650.00 in favor of Bell America Mortgage, LLC, d/b/a Bell Mortgage (“Bell”), granting Bell a mortgage in the Property (“Mortgage”).
10. That, after the Purchase, the Property was titled in the names of the Debtors and the Defendant.
11. That the Debtors have never resided at the Property.
12. That, upon information and belief, the Defendant has resided at the Property and has applied for and received homestead status for the Property in his name.
13. That the Debtors have paid none of the monthly installments due on the Mortgage.

14. That the Defendant has never repaid the Debtors for their contributions to the purchase of the Property.
15. That on September 17, 2003, the Debtors and Defendant executed a deed, recorded in the Office of the Dakota County Recorder on September 19, 2003, purportedly transferring title of the Property from the Debtors and Defendant to the Defendant alone (“Transfer”).
16. That, upon information and belief, the Property increased in value from the date of the Purchase to date of the Transfer.
17. Defendant is the son of the Debtors and therefore an insider as that term is used in Title 11 of the United States Code.
18. That the Debtors did not receive reasonably equivalent value for the Transfer
19. The Transfer occurred within one year of filing while the Debtors were insolvent.
20. That the Transfer is avoidable by the Trustee under 11 U.S.C. § 548 with the Transfer automatically preserved for the benefit of the estate pursuant to 11 U.S.C. § 551.

WHEREFORE, Plaintiff respectfully requests that this Court make its Order:

1. Avoiding, pursuant to 11 U.S.C. §548, the transfer by the Debtors of interest in the real property situated in Dakota county, Minnesota, commonly referred to as 2087 Garnet Lane, City of Eagan and legally described as follows:

Lot Nine (9), Block Five (5), Cedar Grove No. 1, Dakota County, Minnesota
to the Defendants and automatically preserving the Transfer for the benefit of the estate pursuant to 11 U.S.C. §551.

2. Awarding the Plaintiff her costs and disbursements in this action and any other or further relief as the court deems just and equitable.

FULLER, SEAVER & RAMETTE, P.A.

Dated: August _23, 2004

By: ___/e/ Roger B. Seaver _____
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