

UNITED STATE BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No.: 03-51071 GFK

JON ALLEN SCHMIDT and  
LISA M. SCHMIDT,

Debtors.

**NOTICE OF HEARING AND MOTION FOR TURNOVER**

TO: THE ABOVE-NAMED DEBTORS, DEBTORS' ATTORNEY JOHN F. HEDTKE, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Robert R. Kanuit, the duly-appointed and acting trustee in the above-captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 3, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before Honorable Gregory F. Kishel, Courtroom No. 2, U.S. Courthouse, 515 West Fifth Street, Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 27, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than October 24, 2004, which is ten (10) days before the time set for the hearing. **If no response is timely filed, the Court may in its discretion enter an order granting turnover without a hearing.**

4. This Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334, Federal Rules of Bankruptcy 4002, and Local Rule 1070-1. The petition commencing the debtors' Chapter 7 case was filed on August 18, 2003. Robert R. Kanuit was appointed as Chapter 7 Trustee on August 21, 2003. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. 521, 541, 542 and 704 and Federal Rules of Bankruptcy Procedure 4002 and 7001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 9013-1. The Chapter 7 trustee requests turnover of property.

6. By correspondence dated July 13, 2004, and May 3, 2004, attached hereto and incorporated herewith as Exhibit A, the trustee required turnover of property, specifically \$1,432.62, which is the estate's portion of the debtors' 2003 federal income tax refund; and also a 2000 Kasea go-cart; a Remington 12 gauge shotgun; a Remington 20 gauge shotgun; a trailer; a 1965 boat and trailer; a canoe; a 1993 Ford van; and a 1967 Ford Mustang, all of said personal property debtors agreed to purchase for the sum of \$3,000.00, but for which the trustee has not received payment as agreed.

7. The debtors have failed to turn over the property.

8. Because the debtors have failed to turn over the property, the trustee has been unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. 704.

9. In order to ensure that the debtors comply with any order issued by the Court as a result of this motion in a timely manner, the trustee requests that the order be specifically made applicable to revocation of the discharge under 11 U.S.C. 727(a)(6)(A) to allow the trustee to pursue revocation under 727(d)(3) should the debtors not promptly comply with its provisions.

10. This verified motion is based upon all of the files and records herein.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing the debtors to turn over to the trustee the property described above.
2. Directing that the failure to comply with the order of the Court requiring a turnover and an accounting as provided for herein be grounds for revocation of discharge under 11 U.S.C. 727(a)(6)(A).
3. For costs and attorney fees of \$250.00 in connection with bringing this motion.
4. For such other relief as the Court deems just and equitable.

/e/ Robert R. Kanuit

Robert R. Kanuit  
Attorney License No.: 0252530  
4815 W. Arrowhead Drive, #230  
Hermantown, MN 55811  
(218) 722-7722

### **VERIFICATION**

I, Robert R. Kanuit, movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 27th day of September, 2004.

/e/ Robert R. Kanuit  
Robert R. Kanuit

**EXHIBIT "A", Page 1 of 2**

**Via Facsimile Only (218) 728-0038**

July 13, 2004

John F. Hedtke  
Attorney at Law  
1217 E. First Street  
Duluth, MN 55805

RE: Bankruptcy Case No.: 03-51071  
Debtor: Jon A. and Lisa A. Schmidt  
Our File No.: 03-443K

Dear Mr. Hedtke:

To confirm my telephone conversation this morning with your assistant, Patti, regarding the above, Gary Swenson with the IRS has informed us that the debtors' 2003 federal income tax refund was inadvertently mailed directly to the debtors on July 5, 2004. The amount of that check was \$2,274.00. According to the tax refund stipulation signed by the debtors, 63% of that amount belongs to the bankruptcy estate.

Please ask your clients to send us a check in the amount of \$1,432.62, made payable to **Robert Kanuit, Trustee**, within 10 days of the date of this letter.

Should you have any questions regarding this matter, please do not hesitate to contact our office.

Sincerely,

Clara Keopple, Assistant to  
Robert R. Kanuit

/cjk

**EXHIBIT "A", Page 2 of 2**

May 3, 2004

John F. Hedtke  
Attorney at Law  
1217 E. First Street  
Duluth, MN 55805

RE: Bankruptcy Case No.: 03-51071  
Debtor: Jon A. and Lisa A. Schmidt  
Our File No.: 03-443K

Dear Mr. Hedtke:

Please recall that your clients had offered \$2,000.00 for all the nonexempt items in this bankruptcy, and that the only issue was the value of the 1967 Mustang, in the possession of their son. I had a guy from a car dealership in Waconia take a look at it, and he thought it was only worth about \$1,500.00. Adding that to the \$2,000.00 your clients had previously offered, the value of all the nonexempt items is \$3,500.00.

It would cost me about \$500.00 to have the Mustang delivered to Duluth so that I could sell it. Accordingly, I would be willing to accept \$3,000.00 from your clients for all of the nonexempt property, including the Mustang.

Please advise.

Sincerely,

Robert R. Kanuit

RRK:cjk

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No.: 03-51071 GFK

JON ALLEN SCHMIDT and  
LISA M. SCHMIDT,

Debtors.

**TRUSTEE'S MEMORANDUM OF FACTS AND LAW  
IN SUPPORT OF MOTION FOR TURNOVER OF PROPERTY**

Robert R. Kanuit, Chapter 7 trustee, submits the following Memorandum of Facts and Law in Support of his Motion for Turnover in the above-captioned case, and as grounds therefore would respectfully show the Court:

**FACTS**

1. This Chapter 7 case was filed on August 18, 2003, and is now pending before this Court.
2. Robert R. Kanuit was appointed as Chapter 7 trustee on August 21, 2003.
3. The trustee made demand upon the debtors for turnover of property needed to administer the bankruptcy case on July 13, 2004, and May 3, 2004.
4. The debtors failed to supply necessary property to the trustee in response to the turnover demand.
5. The debtors continue to withhold property necessary to conclude administration of the bankruptcy case.

**DISCUSSION**

1. Turnover of Information and Property.

Bankruptcy debtors receive a substantial benefit when relieved of personal liability for repayment of unsecured obligations through discharge. In achieving a balance between the rights of debtors and their creditors, Congress has determined that debtors have an affirmative duty to turn over property necessary to complete administration of the bankruptcy case.

Sections 521(3) and (4) of the Bankruptcy Code provide in pertinent part:

[t]he debtor shall -- . . .

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under Section 344 of this title; .

..

The law interpreting the above sections of the Code is well settled concerning a debtors' affirmative obligation to cooperate with the trustee and to supply necessary information for case administration. See: In re: Lange, 110 B.R. 907, 909 (Bankr. D.Minn. 1990); In re: Bentley, 120 B.R. 712, 715 (Bankr. S.D.N.Y. 1990); and In re: Ridley, 115 B.R. 731, 736 (Bankr. D.Mass. 1990).

Due to the debtors' failure to supply necessary property, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtors provide property, specifically \$1,432.62, which is the estate's portion of the debtors' 2003 federal income tax refund; and also a 2000 Kasea go-cart; a Remington 12 gauge shotgun; a Remington 20 gauge shotgun; a trailer; a 1965 boat and trailer; a canoe; a 1993 Ford van; and a 1967 Ford Mustang, all of said personal property debtors agreed to purchase for the sum of \$3,000.00, but for which the trustee has not received payment as agreed.

## 2. Forfeiture of Discharge.

Under 11 U.S.C. § 727(a)(6)(A), if debtors refuse to comply with court orders, discharge of debts may be withheld. In this case the trustee requests that if the trustee's motion is granted, the terms of the order be applicable under 11 U.S.C. § 727(a)(6)(A) so that the debtors will have an additional incentive to perform in a timely manner.

Based upon the foregoing, the Chapter 7 trustee is entitled to an order requiring that the debtors turn over property requested in Exhibit A to the motion so that he may conclude administration of the bankruptcy estate. To expedite resolution of this matter, the trustee requests that the order be designated a lawful order pursuant to 11 U.S.C. § 727(a)(6)(A).

Dated this 27th day of September, 2004.

/e/ Robert R. Kanuit  
Robert R. Kanuit

**VERIFICATION**

I, Robert R. Kanuit, movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 27th day of September, 2004.

/e/ Robert R. Kanuit  
Robert R. Kanuit

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

Case No.: 03-51071 GFK

JON ALLEN SCHMIDT and  
LISA M. SCHMIDT,

Debtors.

---

**UNSWORN DECLARATION FOR PROOF OF SERVICE**

---

The undersigned, being an employee of Kanuit & Bray, Ltd., attorneys licensed to practice law in this Court, with office address of 4815 W. Arrowhead Road, Hermantown, MN 55811, declares under penalty of perjury that on the date stated below, she served the annexed **Notice of Hearing and Verified Motion for Turnover, Memorandum of Law, and (proposed) Order** upon the persons/entities named below by mailing to them copies thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Hermantown, Minnesota, addressed as follows:

Jon and Lisa Schmidt  
38928 Christie Lane  
Cohasset, MN 55721

John F. Hedtke  
Hedtke Law Office  
1217 East First Street  
Duluth, MN 55805

U.S. Department of Justice  
Office of the United States Trustee  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415

Dated this 27th day of September, 2004.

/e/ Bonnie K. Vanderpool  
Bonnie K. Vanderpool

UNITED STATE BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No.: 03-51071 GFK

JON ALLEN SCHMIDT and  
LISA M. SCHMIDT,

Debtors.

**ORDER**

The above-captioned matter came before the Court on November 3, 2004, on motion by the Chapter 7 trustee, Robert R. Kanuit, seeking an order requiring the debtors turn over property, specifically: \$1,432.62, which is the estate's portion of the debtors' 2003 federal income tax refund; and also a 2000 Kasea go-cart; a Remington 12 gauge shotgun; a Remington 20 gauge shotgun; a trailer; a 1965 boat and trailer; a canoe; a 1993 Ford van; and a 1967 Ford Mustang.

Robert R. Kanuit appeared for the trustee. Other appearances are noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

Based upon the files and records, and arguments of counsel,

IT IS HEREBY ORDERED,

1. That the debtors shall turn over to the trustee the following: \$1,432.62, which is the estate's portion of the debtors' 2003 federal income tax refund; and also a 2000 Kasea go-cart; a Remington 12 gauge shotgun; a Remington 20 gauge shotgun; a trailer; a 1965 boat and trailer; a canoe; a 1993 Ford van; and a 1967 Ford Mustang, not later than December 3, 2004.

2. That this order shall constitute a lawful order within the meaning of 11 U.S.C. 727(a)(6)(A) for purposes of discharge revocation should the debtors fail to comply with its terms in a timely manner.

3. That the attorney for the trustee is hereby awarded \$250.00 as and for attorney fees and costs in connection with the motion for turnover. That said award shall be paid to Kanuit & Bray, Ltd., within 10 days of entry of this order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

---

Honorable Gregory F. Kishel  
United States Bankruptcy Judge