

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Chapter 7
Lynn M. Tracey, Case No.: 03-51032 GFK
Debtor.

Terri A. Georgen, Trustee,
Plaintiff,
v. Adversary No. 04-5021
Lynn M. Tracey, Donovan Schwarzkopf
and Dawn Schwarzkopf,
Defendants.

ANSWER

TO: Terri A. Georgen, Trustee and her counsel, Patrick B. Hennessy, 225 South Sixth Street, Suite 4000, Minneapolis, MN 55402:

For their answer to Plaintiff's complaint, the Defendant's answer and respond as follows:

I. JURISDICTION AND PARTIES

1. On August 7, 2003, a petition for relief was filed under Chapter 7 of the Bankruptcy Code by Lynn M. Tracey ("Debtor"), thereby commencing the above-referenced bankruptcy case.

ANSWER: Admit.

2. Terri A. Georgen ("Trustee") was appointed trustee of this Chapter 7 bankruptcy estate and is the Trustee currently.

ANSWER: Admit.

3. Defendants, Donovan Schwarzkopf and Dawn Schwarzkopf ("Schwarzkopfs"), are individuals residing at 26 Arbutus Drive, Duluth, Minnesota, 55810.

ANSWER: Admit.

4. Defendant, Lynn M. Tracey (“Debtor”), is an individual residing at 2206 West 4th Street, Duluth, Minnesota 55806.

ANSWER: Admit.

5. The Court has jurisdiction over this adversary proceeding pursuant to Sections 157 and 1334 of Title 28 of the United States Code and Bankruptcy Rule 7001.

ANSWER: Admit.

6. Venue of this adversary proceeding is appropriate in this Court pursuant to Section 1409 of Title 28.

ANSWER: Admit.

7. This adversary proceeding arises under Sections 548, 550 and 551 of the U.S. Bankruptcy Code. This is a core proceeding pursuant to Section 157(b)(2)(B), (F), (K) and (O) of Title 28. This complaint is filed under Bankruptcy Rule 7001 and Local Rule 901.

ANSWER: Admit.

COUNT I.
FRAUDULENT TRANSFER OF REAL ESTATE UNDER SECTION 548 OF THE
U.S. BANKRUPTCY CODE . CONSTRUCTIVE FRAUD

8. As of March 20, 2003, Lynn M. Tracey owned real estate in St. Louis County, Minnesota, legally described as (the “Property”):

The Northerly One Hundred Sixty-five feet (N’y 165’) of the East Half of the Northeast Quarter of Northeast Quarter of Southeast Quarter (E^{1/2} of NE^{1/4} of NE^{1/4} of SE^{1/4}), Section Twenty-one (21), Township Fifty (50) North of Range Fifteen (15) West of the Fourth Principal Meridian, according to the United States Government Survey thereof, St. Louis County, Minnesota.

Title of the Property is currently memorialized by Certificate of Title No. 294591 with the St. Louis County Registrar of Titles.

ANSWER: Admit.

9. On March 20, 2003, and within one-year prior to the filing of the bankruptcy petition herein, Debtor executed a deed to defendant Donovan Schwarzkopf, who is Debtor’s son, purporting to transfer the Property for a consideration of \$500.00 or less. Such deed was recorded with the St. Louis County Registrar of Titles on April 7, 2003 as Document No. 745582.

ANSWER: Denies that the date of execution of the deed and transfer of title occurred on March 20, 2003, and affirmatively that such execution of the deed and transfer of title occurred on April 25, 1996, and is without current information as to the date of filing, but acknowledges that the recording was delayed because of the misplacement of the deed by attorney William Paul. (Photocopy attached)

10. Defendant Dawn Schwarzkopf is married to defendant Donovan Schwarzkopf and may claim an interest in the Property as a result thereof.

ANSWER: Admit.

11. The Property transferred to defendant Donovan Schwarzkopf had a value, on the date of transfer, in excess of \$35,000.00.

ANSWER: Denied, and affirmatively alleged that the value of the property on the date of transfer had a value of \$6,000.

12. The transfer of the Property to defendant Donovan Schwarzkopf constitutes a transfer of an interest of the Debtor in property.

ANSWER: Admit.

13. The Debtor received less than reasonably equivalent value in exchange for such transfer, and was insolvent on the date the transfer was made or intended or believed that the Debtor would incur debts that would be beyond the Debtor's ability to pay as such debts matured.

ANSWER: Denied.

14. Pursuant to 11 U.S.C. § 548, the Trustee may avoid the transfer of the Property to Donovan Schwarzkopf, including any interest obtained thereby by Dawn Schwarzkopf.

ANSWER: Denied.

15. Pursuant to 11 U.S.C. § 550(a) and § 551, the Trustee may preserve such transferred interests for the benefit of the bankruptcy estate and against any claim by the Debtor to exempt the property.

ANSWER: Denied.

COUNT II.
FRAUDULENT TRANSFER OF PROPERTY UNDER SECTION 513.44 OF
THE MINNESOTA STATUTES ACTUAL FRAUD

16. Plaintiff reincorporates and realleges the allegations in paragraphs 8 through 13.

ANSWER: Defendants re-assert their responses as provided to paragraphs 8 through 13.

17. The transfer of the Property was made by the Debtor with actual intent to hinder, delay or defraud her then existing and future creditors.

ANSWER: Denied.

18. Pursuant to 11 U.S.C. § 548, the Trustee may avoid the transfer of the Property to Donovan Schwarzkopf, including any interest obtained thereby by Dawn Schwarzkopf.

ANSWER: Denied.

19. Pursuant to 11 U.S.C. § 550(a) and § 551, the Trustee may preserve such transferred interests for the benefit of the bankruptcy estate and against any claim by the Debtor to exempt the property.

ANSWER: Denied.

WHEREFORE, Defendants requests judgment in their favor as follows:

1. Denying all of the Trustee's requests for judgment; and,
2. Awarding judgment in favor of the Defendants and against the Trustee their taxable costs and disbursements; and
3. Granting any other relief the Court deems just and proper.

Date: June 8, 2004.



Arthur M. Albertson, AIN 863
Attorney at Law
101 West Second Street, Ste 107
Duluth, MN 55802
(218) 733-0660
(218) 733-0767 facsimile

No delinquent taxes and transfer entered; Certificate
of Real Estate Value () filed () not required
Certificate of Real Estate Value No. _____

_____, 19 _____

County Auditor
by _____
Deputy

STATE DEED TAX DUE HEREON: \$ _____

Date: April 25, 19 96

(reserved for recording data)

FOR VALUABLE CONSIDERATION, Lynn Marie Tracey, single
_____, Grantor (s),
(marital status)

hereby convey (s) and warrant (s) to Donovan James Schwarzkopf
_____, Grantees as joint
tenants, real property in St. Louis County, Minnesota, described as follows:

The Northerly One Hundred Sixty-five feet (N'ly 165')
of the East Half of Northeast Quarter of Northeast
Quarter of Southeast Quarter (E½ of NE¼ of NE¼ of SE¼),
Section Twenty-one (21), Township Fifty (50) North of
Range Fifteen (15) West of the Fourth Principal Meridian
according to the United States Government Survey thereof,
EXCEPT ALL MINERALS.

(Seller certifies that there are no wells on this property)

(if more space is needed, continue on back)

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:

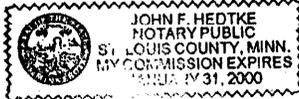
Affix Deed Tax Stamp Here

Lynn Marie Tracey
Lynn Marie Tracey

STATE OF MINNESOTA }
COUNTY OF St. Louis } ss.

The foregoing instrument was acknowledged before me this 25th day of April, 1996,
by Lynn Marie Tracey, single, Grantor (s).

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)



SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

Tax Statements for the real property described in this instrument should
be sent to (include name and address of Grantee):

Donovan J. Schwarzkopf
26 Arbitus Drive
Duluth, MN 55811

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

William D. Paul
Attorney at Law
1217 East First Street
Duluth, MN 55805
(218) 728-6496
Atty. ID #164811

