

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ryan Richard Davidson,

Debtor(s)

Chapter 7

BE 04-51067 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5044

Ryan Richard Davidson,

Defendant(s).

NOTICE OF HEARING AND MOTION FOR DEFAULT JUDGMENT

Habbo G. Fokkena, United States Trustee, Plaintiff, by and through his undersigned attorney, Sarah J. Wencil, hereby moves the Court for default judgment against Ryan Richard Davidson (the defendant debtor) on the following grounds:

1. A hearing will be held on this motion on December 8, 2004 at 2:30 P.M. before the Honorable Gregory F. Kishel, Courtroom No. 2, United States Courthouse, 515 W. 1st Street, Duluth, Minnesota.
2. Any response to this motion must be filed and delivered not later than December 3, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than November 29, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1. **UNLESS A RESPONSE**

OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

3. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and FED. R. BANKR. P. 4004. This proceeding is a core proceeding.

4. The United States Trustee filed the above named complaint under FED. R. BANKR. P. 7001(4) to seek a denial of discharge in defendant debtor's bankruptcy case pursuant to 11 U.S.C. § 727(a)(8).

5. Summons was issued on September 28, 2004, by the United States Bankruptcy Court, District of Minnesota, directing the defendant debtor to file an answer with the United States Bankruptcy Court within thirty (30) days pursuant to the Bankruptcy Rules. *See* Att. Ex. 1 (Docket Report in Adv. Case No. 04-5044). The United States Trustee mailed said complaint and summons to the defendant debtor and to his bankruptcy counsel on September 28, 2004. *See* Att. Ex. 2 (copy of Affidavit of Service). The certificate of service was docketed on September 28, 2004. *See* Att. Ex. 1.

6. An answer to the United States Trustee's complaint was due on approximately October 28, 2004. FED. R. BANKR. P. 7012(a).

7. As of the date of this Application, the defendant debtor has not filed an answer to the United States Trustee's complaint. *See* Affidavit of Default.

8. The United States Trustee made the following allegation in his complaint: The defendant debtor, Ryan Richard Davidson, is a resident of Minnesota. The defendant debtor commenced the present bankruptcy case on September 23, 2004 (Bank. Case No.04-51067). The defendant debtor commenced a prior chapter 7 bankruptcy case on March 16, 1999 (Bank. Case

No. 99-50289). The defendant debtor received a Chapter 7 discharge on June 16, 1999 in bankruptcy case no. 99-50289. The defendant debtor failed to disclose the prior bankruptcy case on the Voluntary Petition of the present case under the category marked “PRIOR BANKRUPTCY CASE FILED WITHIN LAST 6 YEARS (If more than one, attach additional sheet).” The defendant debtor did not list any prior cases. The attorney in the present case is not the same attorney who represented the defendant debtor in the prior bankruptcy case.

9. The defendant debtor is not eligible for a discharge of his debts in the present case pursuant to 11 U.S.C. § 727(a)(8). *See* Affidavit on the Merits.

10. Under cover letter dated, October 8, 2004, defendant debtor’s bankruptcy counsel wrote to the Office of the U.S. Trustee to state that he discussed the complaint with the defendant debtor and that he would not be submitting an answer to the complaint.

WHEREFORE, the United States Trustee requests that the Bankruptcy Court enter a default judgment denying the defendant debtor’s discharge in bankruptcy case number 04-51067.

Dated: November 2, 2004

HABBO G. FOKKENA
UNITED STATES TRUSTEE
REGION 12

BY: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
1015 U.S. Courthouse
300 South Fourth St.
Minneapolis, MN 55415
(612) 664-5504
IA ATTY NO. 14014

Exhibit 1

Return to Search Results Page

U.S. Bankruptcy Court
District of Minnesota (Duluth)

Bankruptcy Petition #: 04-51067

Date filed: 9/23/04
Assigned to: CHIEF JUDGE GREGORY F KISHEL
Chapter 7 voluntary individual no asset

* Attorneys *

RYAN RICHARD DAVIDSON
516 N 9TH STREET APT 2
BRainerd, MN 56401
SSN: XXX-XX-3376
* Debtor *

JAMES P FOSSUM
JAMES P FOSSUM PA
PO BOX 552
BRainerd, MN 56401
218-825-0861

U S TRUSTEE
US TRUSTEE OFFICE
300 S 4TH ST RM 1015
MINNEAPOLIS, MN 55415
* U S Trustee *

DORRAINE A LARISON
1010 W ST GERMAIN RM 600
ST CLOUD, MN 56301
* Trustee *

Proceedings include all events.

- 9/23/04 1 Voluntary Petition all schedules and statements.
Electronically filed by James P Fossum on: Thu Sep 23
09:32:24 2004 (A515) [EOD 09/23/04] [04-51067]
- 9/23/04 2 Declaration of Original Signature Re: [1-1] Electronic
Voluntary Petition . (A515) [EOD 09/23/04] [04-51067]
- 9/23/04 -- Added U S TRUSTEE. (auto) [EOD 09/23/04] [04-51067]
- 9/23/04 3 Creditor list supplied by debtor. (A515) [EOD 09/23/04]
[04-51067]
- 9/23/04 -- Filing Fee Paid in Full Re: [1-1] Electronic Voluntary
Petition (Filing Fee \$ 209.00 Receipt # 27184) (sls)
[EOD 09/23/04] [04-51067]
- 9/23/04 4 Appointment of Interim Trustee and Approval of Bond. (sls)
[EOD 09/23/04] [04-51067]

Proceedings include all events.

04-51067 In re: RYAN RICHARD DAVIDSON

9/23/04 5 Notice of Meeting of Creditors under 11 USC 341(a)
Scheduled For 9:30 10/28/04 At St. Cloud Last Day To Oppose
Discharge: 12/27/04 Certificate of Service. (sls)
[EOD 09/23/04] [04-51067]

9/28/04 -- Complaint (04-5044) HABBO G FOKKENA
vs. RYAN RICHARD DAVIDSON. NOS 424
Objection To Discharge (727) by Sarah Wencil on: Tue Sep
28 12:02:48 2004 (A052) [EOD 09/28/04] [04-5044]

Exhibit 2

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ryan Richard Davidson,

Debtor(s)

Chapter 7

BE 04-51067 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5044

Ryan Richard Davidson,

Defendant(s).

AFFIDAVIT OF SERVICE

The undersigned hereby certifies under penalty of perjury that she is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers.

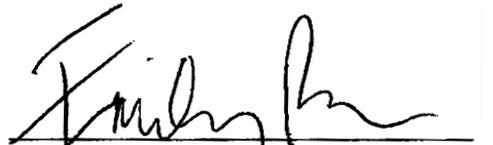
That on September 28, 2004, she served a copy of the United States Trustee's Summons & Complaint Objecting to Discharge in the above-referenced case by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s):

Dorraine A. Larison
1010 W. St. Germain, Room 600
St. Cloud, MN 56301

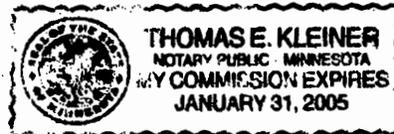
James P. Fossum
P O Box 552
Brainerd, MN 56401

Ryan Richard Davidson
516 N 9th Street, Apt. 2
Brainerd, MN 56401


Office of the United States Trustee
Emily Rohr

Subscribed and sworn to before
me this 28th day of September, 2004.


Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ryan Richard Davidson,

Debtor(s)

Chapter 7

BE 04-51067 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5044

Ryan Richard Davidson,

Defendant(s).

AFFIDAVIT OF DEFAULT

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney for the United States Trustee.
2. I am the attorney of record for the United States Trustee in the above entitled adversary proceeding.
3. I have not been served with an answer by the defendant.
4. A Docket report generated on November 2, 2004, shows that no answer was docketed by the Bankruptcy Court within the time prescribed by the Bankruptcy Rules. *See* Motion for Default (Att. Ex. 1).

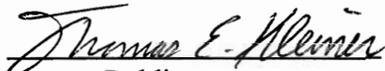
This concludes my Affidavit.

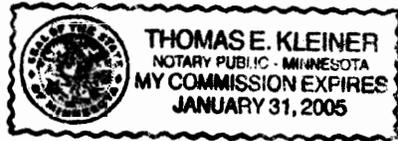
Dated: November 2, 2004



Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me The 2nd Day of November, 2004.


Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ryan Richard Davidson,

Debtor(s)

Chapter 7

BE 04-51067 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5044

Ryan Richard Davidson,

Defendant(s).

AFFIDAVIT OF IDENTIFICATION

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled adversary proceeding.
3. The name and address of the defendant debtor in the above entitled matter is listed on the Notice of Commencement of Case under Chapter 7 of the Bankruptcy Code (case number 04-51067), as the following: Ryan Richard Davidson, 516 N. 9th Street, Apt. 2, Brainerd, MN 56401. *See Att. Ex. 1.*
4. Original Schedule I lists that the defendant debtor is single, is employed as a press operator for Central Minnesota Tool, and has one minor aged dependent. *See Att. Ex. 2.*
5. According to the attached Schedule, the defendant debtor is not an infant and is

not employed by a military organization.

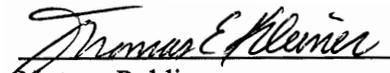
6. The schedules in case number 04-51067 were signed by the defendant debtor under penalty of perjury. *See* Att. Ex. 3.
7. The defendant debtor is represented by counsel in bankruptcy case number 04-51067: James P. Fossum, P O Box 552, Brainerd, MN 56401.
8. Based on the foregoing, the United States Trustee is of the belief that the defendant debtor is competent.

Dated: November 2, 2004



Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me The 2nd Day of November, 2004.


Notary Public

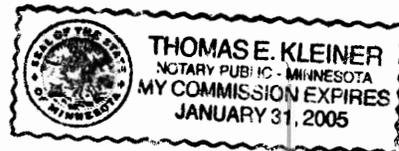


Exhibit 1

UNITED STATES BANKRUPTCY COURT

District of Minnesota

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 09/23/04.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected by accessing the court's web site at www.mnb.uscourts.gov or at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):

RYAN RICHARD DAVIDSON
516 N 9TH STREET APT 2
BRAINERD, MN 56401

Case Number:
04 - 51067 - GFK

Social Security/Taxpayer ID Nos.:
XXX-XX-3376

Attorney for Debtor(s) (name and address):

JAMES P FOSSUM
JAMES P FOSSUM PA
PO BOX 552
BRAINERD, MN 56401
Telephone number: 218-825-0861

Bankruptcy Trustee (name and address):

DORRAINE A LARISON
1010 W ST GERMAIN RM 600
ST CLOUD, MN 56301

Telephone number: 320-252-4414

Meeting of Creditors:

Date: **October 28, 2004** Time: **09:30 am** Location: **STEARNS COUNTY COURTHOUSE
RM 134
725 COURTHOUSE SQUARE
ST CLOUD, MN 56303**

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:
12/27/04

Deadline to Object to Exemptions:
Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.

Address of the Bankruptcy Clerk's Office:

U S BANKRUPTCY COURT
U S COURTHOUSE RM 416
515 W 1ST ST
DULUTH, MN 55802

Web address: www.mnb.uscourts.gov

For the Court:

Acting Clerk of the Bankruptcy Court:
LORI VOSEJPKA

Hours Open: Monday - Friday 8:00 AM - 5:00 PM

Date: 09/23/04

Exhibit 2

Debtor(s)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status Single	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP Daughter	AGE 6
EMPLOYMENT: DEBTOR		SPOUSE
Occupation	Press Operator	
Name of Employer	Central Minnesota Tool	
How long employed	1 Year	
Address of Employer	Little Falls, MN	

	DEBTOR	SPOUSE
Income: (Estimate of average monthly income)		
Current Monthly gross wages, salary, and commissions (pro rata if not paid monthly)	\$ 1,797.00	\$ _____
Estimated monthly overtime	\$ _____	\$ _____
SUBTOTAL	\$ 1,797.00	\$ _____
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and Social Security	\$ 245.38	\$ _____
b. Insurance	\$ 69.28	\$ _____
c. Union dues	\$ _____	\$ _____
d. Other (specify) Child Support	\$ 231.46	\$ _____
	\$ _____	\$ _____
SUBTOTAL OF PAYROLL DEDUCTIONS	\$ 546.12	\$ _____
TOTAL NET MONTHLY TAKE HOME PAY	\$ 1,250.88	\$ _____
Regular income from operation of business or profession or farm (attach detailed statement)	\$ _____	\$ _____
Income from real property	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ _____	\$ _____
Social Security or other government assistance (Specify) _____	\$ _____	\$ _____
	\$ _____	\$ _____
Pension or retirement income	\$ _____	\$ _____
Other monthly income (Specify) _____	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
TOTAL MONTHLY INCOME	\$ 1,250.88	\$ _____
TOTAL COMBINED MONTHLY INCOME \$ <u>1,250.88</u> (Report also on Summary of Schedules)		

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Exhibit 3

United States Bankruptcy Court
District of Minnesota

IN RE:

Case No. _____

Davidson, Ryan Richard

Debtor(s)

Chapter 7

SIGNATURE DECLARATION

- PETITION, SCHEDULES & STATEMENTS
- CHAPTER 13 PLAN
- SCHEDULES & STATEMENTS ACCOMPANYING VERIFIED CONVERSION
- AMENDMENT TO PETITION, SCHEDULES & STATEMENTS
- MODIFIED CHAPTER 13 PLAN
- OTHER (Please describe) _____

I [We], the undersigned debtor(s) or authorized representative of the debtor, **make the following declarations under penalty of perjury:**

- The information I have given my attorney and provided in the electronically filed petition, statements, schedules, amendments, and/or chapter 13 plan, as indicated above, is true and correct;
- The information provided in the "Debtor Information Pages" submitted as a part of the electronic commencement of the above-referenced case is true and correct;
- [individual debtors only] If no Social Security Number is included in the "Debtor Information Pages" submitted as a part of the electronic commencement of the above-referenced case, it is because I do not have a Social Security Number;
- I consent to my attorney electronically filing with United States Bankruptcy Court my petition, statements and schedules, amendments, and/or chapter 13 plan, as indicated above, together with a scanned image of this Signature Declaration and the completed "Debtor Information Pages," if applicable; and
- [corporate and partnership debtors only] I have been authorized to file this petition on behalf of the debtor.

Date: 8/26/04

X Ryan R Davidson
Signature of Debtor or Authorized Representative

Ryan Richard Davidson
Printed Name of Debtor or Authorized Representative

X _____
Signature of Joint Debtor

Printed Name of Joint Debtor

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ryan Richard Davidson,

Debtor(s)

Chapter 7

BE 04-51067 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5044

Ryan Richard Davidson,

Defendant(s).

AFFIDAVIT ON MERITS AND AMOUNT DUE

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled case.
3. A monetary judgment has not been requested in this adversarial proceeding. The relief sought by the United States Trustee is a denial of the defendant debtor's Chapter 7 discharge in case number 04-51067.
4. The United States Trustee has a legal basis upon which to request such relief pursuant to the authority of 11 U.S.C. § 727(a)(8).
5. Said relief is supported by the following facts: The defendant debtor, Ryan Richard Davidson, is a resident of Minnesota. The defendant debtor commenced the present bankruptcy case on September 23, 2004 (Bank. Case No.04-51067).

The defendant debtor commenced a prior chapter 7 bankruptcy case on March 16, 1999 (Bank. Case No. 99-50289). The defendant debtor received a Chapter 7 discharge on June 16, 1999 in bankruptcy case no. 99-50289. The defendant debtor failed to disclose the prior bankruptcy case on the Voluntary Petition of the present case under the category marked "PRIOR BANKRUPTCY CASE FILED WITHIN LAST 6 YEARS (If more than one, attach additional sheet)." The defendant debtor did not list any prior cases. The attorney in the present case is not the same attorney who represented the defendant debtor in the prior bankruptcy case.

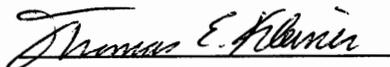
6. The defendant debtor is not entitled to a discharge of his debts in bankruptcy case no. 04-51067 pursuant to 11 U.S.C. § 727(a)(8).

Dated: November 2, 2004

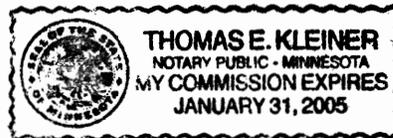


Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me The 2nd Day of November, 2004.



Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ryan Richard Davidson,

Chapter 7

Debtor(s)

BE 04-51067 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5044

Ryan Richard Davidson,

Defendant(s).

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT**

At St. Paul, Minnesota on the _____ day of _____, 2004, the United States Trustee's Motion for Default Judgment, which was supported by an Affidavit of Default, an Affidavit of Identification, and an Affidavit on the Merits as required by Local Bankruptcy Rule 7055-1 came before the undersigned.

Findings of Fact

1. The defendant debtor, Ryan Richard Davidson, commenced the present bankruptcy case on September 23, 2004 (Bank. Case No.04-51067).
2. The defendant debtor commenced a prior chapter 7 bankruptcy case on March 16, 1999 (Bank. Case No. 99-50289).
3. The defendant debtor received a Chapter 7 discharge on June 16, 1999 in

bankruptcy case no. 99-50289.

4. The defendant debtor failed to disclose bankruptcy case number 99-50289 on the Voluntary Petition of the present case under the category marked "PRIOR BANKRUPTCY CASE FILED WITHIN LAST 6 YEARS (If more than one, attach additional sheet)."

Conclusions of Law

Pursuant to 11 U.S.C. § 727(a)(8), the defendant debtor has been granted a discharge under Section 727 in a case commenced within six years before the date of filing this petition. The defendant debtor is not entitled to a discharge of his debts in bankruptcy case number 04-51067.

Order for Judgment

IT IS HEREBY ORDERED: the defendant's discharge is denied in bankruptcy case number 04-51067. LET JUDGMENT BE ENTERED ACCORDINGLY.

The Honorable Gregory F. Kishel
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ryan Richard Davidson,

Debtor(s)

Chapter 7

BE 04-51067 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5044

Ryan Richard Davidson,

Defendant(s).

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers.

That on November 2, 2004, she served a copy of the attached: Motion for Default Judgement, Affidavit of Default, Affidavit of Identification, Affidavit on the Merits, and proposed Findings of Fact, Conclusions of Law and Order for Judgement, by placing said copies in a postpaid envelope addressed to the person(s), herein after named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressees:

Dorraine A. Larison
1010 W. St. Germain, Room 600
St. Cloud, MN 56301

James P. Fossum
P O Box 552
Brainerd, MN 56401

Ryan Richard Davidson
516 N 9th Street, Apt. 2
Brainerd, MN 56401



Office of the United States Trustee
Emily Rohr

Subscribed and sworn to before
me the 2nd day of November, 2004.



Notary Public

