

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50401 GFK

LINDA M CAIN,

Debtor.

NOTICE OF HEARING AND VERIFIED MOTION FOR TURNOVER

TO: THE ABOVE-NAMED DEBTOR, HER ATTORNEY, ARTHUR M. ALBERTSON, 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 September 8, 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 September 1, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than August 29, 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 debtor's Chapter 7 case was filed on April 6, 2004. Robert R. Kanuit was appointed as Chapter 7 Trustee on April 9, 2004. 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 information regarding property of the estate.

6. By correspondence dated May 21, 2004, attached hereto and incorporated herewith as Exhibit A, the trustee required turnover of information, specifically: copies of debtor's statements from her Wells Fargo Visa Card account for the six-month period prior to the date she filed bankruptcy. Debtor was also asked to turn over the sum of \$3,800.00, which amount represents improper gifts made to her son and daughter. Since debtor failed to turn over the \$3,800.00, the trustee needs the current address of her daughter, Amanda Cain, and her son, Justin Cain.

7. The debtor has failed to turn over the information.

8. Because the debtor has failed to turn over the information, 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 debtor complies 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 debtor(s) 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 debtor to turn over to the trustee the information described above; and
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 28th day of June, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit

May 21, 2004

Arthur M. Albertson
Attorney at Law
101 W. 2nd Street
Suite 100
Duluth, Minnesota 55802

RE: Bankruptcy Case No.: 04-50401
Debtor: Linda M. Cain
Our File No.: 04-100.62

Dear Mr. Albertson:

A couple of matters regarding the above:

1. Please ask your client to furnish me copies of her statements from her Wells Fargo Visa Card, account no. 4465-4201-1953-7108, for the six-month period prior to the date she filed bankruptcy. Please provide this information within 30 days of the date of this letter.
2. At the meeting of creditors, your client testified under oath that she gave \$3,800.00, in total, to her daughter and son over the past year. As you know, these transfers are avoidable by me under the Bankruptcy Code. Please ask your client if she is willing to reimburse the bankruptcy estate for these improper gifts. If I do not hear from you within 30 days of the date of this letter, I will assume she is not interested in doing that and will proceed to file adversary proceedings against the daughter and son.

Thank you for your attention to these matters.

Sincerely,

Robert R. Kanuit

RRK:cjk

EXHIBIT A

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50401 GFK

LINDA M CAIN,

Debtor.

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

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 April 6, 2004, and is pending before this Court.
2. Robert R. Kanuit was appointed as Chapter 7 trustee on April 9, 2004.
3. The trustee made demand upon the debtor for turnover of information and property needed to administer the bankruptcy case on May 21, 2004.
4. The debtor failed to turn over the information and property to the trustee in response to the turnover demand.
5. The debtor continues to withhold information necessary to conclude administration of the bankruptcy case.

DISCUSSION

Turnover of Information.

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 information/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 debtor's affirmative obligation to cooperate with the trustee and to supply necessary property/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 debtor's failure to turn over information and property belonging to the estate, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtor turn over information, specifically: copies of debtor's statements from her Wells Fargo Visa Card account for the six-month period prior to the date she filed bankruptcy. Debtor was also asked to turn over the sum of \$3,800.00, which amount represents improper gifts made to her son and daughter. Since debtor failed to turn over the \$3,800.00, the trustee needs the current address of her daughter, Amanda Cain, and her son, Justin Cain.

Dated this 28th day of June, 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 28th day of June, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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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 entities/persons named below by mailing to them a copy 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:

Linda M. Cain
601 N.E. Windrose Court
Kansas City, MO 64155

Arthur M. Albertson
Attorney at Law
101 W. 2nd Street, Suite, 107
Duluth, MN 55802

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 28th day of June, 2004.

/e/ Clara J. Keopple
Clara J. Keopple

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50401 GFK

LINDA M CAIN,
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ORDER

The above-captioned matter came before the Court on the _____, 2004, on motion by the Chapter 7 trustee, Robert R. Kanuit, seeking an order requiring the debtor to turn over information, specifically: copies of debtor's statements from her Wells Fargo Visa Card account for the six-month period prior to the date she filed bankruptcy. Debtor was also asked to turn over the sum of \$3,800.00, which amount represents improper gifts made to her son and daughter. Since debtor failed to turn over the \$3,800.00, the trustee needs the current address of her daughter, Amanda Cain, and her son, Justin Cain.

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 debtor shall turn over to the trustee the following information, not later than September 22, 2004: copies of debtor's statements from her Wells Fargo Visa Card account for the six-month period prior to the date she filed bankruptcy. Debtor was also asked to turn over the sum of \$3,800.00, which amount represents improper gifts made to her son and daughter. Since debtor failed to turn over the \$3,800.00, the trustee needs the current address of her daughter, Amanda Cain, and her son, Justin Cain.

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 debtor 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