

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50768 GFK

JOHN D. McINTOSH and
CAROL Y. McINTOSH,

Debtors.

NOTICE OF HEARING AND MOTION FOR TURNOVER

TO: RON TIERNEY; THE ABOVE-NAMED DEBTORS; THEIR ATTORNEY DANIEL R. BINA; 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 29, 2004, which is three (3) days before the time set for the hearing, or filed and served by mail not later than October 25, 2004, which is seven (7) 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 July 2, 2004. Robert R. Kanuit was appointed as Chapter 7 Trustee on July 2, 2004. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. 521, 541, 542, 543 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 August 30, 2004, and September 21, 2004, attached hereto and incorporated herewith as Exhibits A and B, the trustee required that Ron Tierney turn over property, specifically a 2001 Alumacraft Trophy 175 boat, a 2001 Yamaha 115 HP motor, and a boat trailer.

7. Mr. Tierney, a custodian of the property according to debtors, has failed to turn over the property.

8. Because Mr. Tierney has 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. This verified motion is based upon all of the files and records herein.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing Ron Tierney to turn over to the trustee the property described above.
2. For an award of costs and attorney's fees of \$250.00 against Ron Tierney.
3. 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 11th day of October, 2004.

/e/ Robert R. Kanuit

Robert R. Kanuit

EXHIBIT "A"

August 30, 2004

Mr. Ron Tierney
815 Budd Road
Montevideo, MN 56265-4434

RE: Bankruptcy Case No.: 04-50768
Debtors: John and Carol McIntosh
Our File No.: 04-100.100

Dear Sir/Madam:

Recently I was appointed Trustee in the bankruptcy of the above-captioned debtors. A copy of my appointment is enclosed. You are listed as a secured creditor in the bankruptcy petition. As Trustee, I would request that you provide me within 14 days of the date of this letter, documentation that you possess a duly perfected lien or security interest in property of the debtors. The information which will establish the duly perfected lien or security interest would include all of the following:

1. A statement of the amount due as of the date of filing, net of precomputed interest and finance charges and unearned insurance.
2. A copy of the promissory note, account, contract or other agreement which establishes the amount which you claim to be due.
3. If you claim security in a motor vehicle, a copy of the certificate of title.
4. If you claim security in personal property other than a motor vehicle, a copy of the security agreement and the financing statement which must show evidence of where and when it was filed.
5. If you claim security in real estate, a copy of the mortgage, mechanic's lien, judgment, entry or other document showing where and when it was recorded, including any book and page number or case number where it can be found.

6. Any proof you have of the value of the property in which you claim security.

Upon receipt of this documentation, I will determine whether the property in which you claim security has a fair market value which exceeds the secured debt. If there is equity in property of the debtors which has not been claimed exempt, I will seek to dispose of the same and pay secured debts in accordance with their priority from the sales proceeds. If the documentation I receive discloses proper perfection of liens, encumbrances or security interests greater than the value of the collateral, I will promptly abandon the property from administration of the bankruptcy. The abandonment of property by the Trustee constitutes a disclaimer of any interest in the collateral and will enable secured creditors to proceed in any manner authorized by law to collect their debt from the property in which they hold collateral. You should be very certain that you do not take any action against the property of the bankruptcy estate until an order of abandonment has been filed by the court.

You must provide the requested information to me even if you have or will be filing a proof of claim with the bankruptcy court, and even though the debtors have or propose to reaffirm the indebtedness with you. Without the above information, I cannot determine whether to abandon the property in which you may have a security interest and it may be necessary for me to seek authority from the court to sell the property.

Thank you for your cooperation.

Sincerely,

Robert R. Kanuit
Chapter 7 Bankruptcy Trustee

RRK:bkp
Enclosure

EXHIBIT "B"

September 21, 2004

Mr. Ron Tierney
815 Budd Road
Montevideo, MN 56265-4434

RE: Bankruptcy Case No.: 04-50768
Debtors: John and Carol McIntosh
Our File No.: 04-100.100

Dear Mr. Tierney:

Please respond to my letter dated August 30, 2004, regarding the above, a copy of which is enclosed for your reference. If I do not receive a response from you within ten (10) days of the date of this letter, a subpoena will follow requiring you to appear before the bankruptcy court in Duluth and provide the requested information there.

Sincerely,

Robert R. Kanuit
Chapter 7 Bankruptcy Trustee

RRK:bkp
Enclosure

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50768 GFK

JOHN D. McINTOSH and
CAROL Y. McINTOSH,

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 July 2, 2004, and is now pending before this Court.
2. Robert R. Kanuit was appointed as Chapter 7 trustee on July 2, 2004.
3. The trustee made demand upon Ron Tierney for turnover of property needed to administer the bankruptcy case on August 30, 2004, and September 21, 2004.
4. Ron Tierney failed to supply necessary property to the trustee in response to the turnover demand.
5. Ron Tierney continues to withhold property necessary to conclude administration of the bankruptcy case.

DISCUSSION

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 and custodians of debtor's property have an affirmative duty to turn over property necessary to complete administration of the bankruptcy case.

As a custodian of the boat, motor and trailer, Ron Tierney must turn these items over to the trustee pursuant to 11 U.S.C. §543.

Based upon the foregoing, the Chapter 7 trustee is entitled to an order requiring that Ron Tierney turn over property requested in the motion so that he may conclude administration of the bankruptcy estate.

Dated this 11th day of October, 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 11th day of October, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case No.: 04-50768 GFK

JOHN D. McINTOSH and
CAROL Y. McINTOSH,

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:

John and Carol McIntosh
65606 Boundary Line Road
Askov, MN 55704

Mr. Daniel R. Bina
Attorney at Law
1639 Main Street North, Suite 1
Pine City, MN 55063

Ron Tierney
815 Budd Road
Montevideo, MN 56265-4434

TCF Mortgage Corporation
c/o McCalla, Raymer, et al.
Bankruptcy Department
1544 Old Alabama Road
Roswell, GA 30076

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 11th day of October, 2004.

/e/ Bonnie K. Vanderpool
Bonnie K. Vanderpool

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50768 GFK

JOHN D. McINTOSH and
CAROL Y. McINTOSH,

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 Ron Tierney turn over property, specifically: a 2001 Alumacraft Trophy 175 boat, a 2001 Yamaha 115 HP motor, and a boat trailer.

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 Ron Tierney shall turn over to the trustee the following: a 2001 Alumacraft Trophy 175 boat, a 2001 Yamaha 115 HP motor, and a boat trailer, not later than December 1, 2004.

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

Dated this _____ day of _____, 2004.

Honorable Gregory F. Kishel
United States Bankruptcy Judge