

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50769 RJK

KATHERINE T. PURKAT,

Debtor.

NOTICE OF HEARING AND VERIFIED MOTION FOR TURNOVER

TO: THE ABOVE-NAMED DEBTOR, HER ATTORNEY PETER C. GREENLEE, 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 29, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before Honorable Robert J. Kressel, 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 November 22, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than November 19, 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 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 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 13, 2004, a copy attached hereto and incorporated herewith as Exhibit A, the trustee required turnover of property regarding property of the estate, specifically: copy of debtor's bank account statement from Wells Fargo indicating the balance in her bank account as of the filing date of July 2, 2004.

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

8. Because the debtor 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 the debtor to turn over to the trustee the property described above.
2. For such other relief as the Court deems just and equitable.

Dated this 20th day of October, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit (#0252530)
4815 W. Arrowhead Road, #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 20th day of October, 2004.

/e/ Robert R. Kanuit

EXHIBIT "A"

August 13, 2004

Mr. Peter C. Greenlee
Greenlee Law Office
P.O. Box 1067
Twig, MN 55791

RE: Bankruptcy Case No.: 04-50769
Debtor: Katherine T. Purkat
Our File No.: 04-100.90

Dear Mr. Greenlee:

Please have your client sign the enclosed tax refund stipulation and return it to me within ten (10) days of the date of this letter.

Also, please ask her to provide me with a copy of her Wells Fargo bank account statement showing the balance in her bank account as of the date of filing, July 2, 2004. I will also need to receive that information within ten (10) days of the date of this letter.

Thank you.

Sincerely,

Robert R. Kanuit

RRK:bkp
Enclosure

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50769 RJK

KATHERINE T. PURKAT,

Debtor.

**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 pending before this Court.
2. Robert R. Kanuit was appointed as Chapter 7 trustee on July 2, 2004.
3. The trustee made demand upon the debtor for turnover of property needed to administer the bankruptcy case on August 13, 2004.
4. The debtor failed to supply necessary property to the trustee in response to the turnover demand.
5. The debtor continues to withhold property necessary to conclude administration of the bankruptcy case.

DISCUSSION

Turnover of Information and Property.

Bankruptcy debtor(s) 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 debtor(s)' 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 debtor's failure to supply necessary property, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtor turn over property of the estate, specifically: copy of debtor's bank account statement from Wells Fargo indicating the balance in her bank account as of the filing date of July 2, 2004.

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

Dated this 20th 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 20th day of October, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50769 RJK

KATHERINE T. PURKAT,

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

The undersigned, being and 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, Trustee's Memorandum of Facts and Law in Support of Motion for Turnover and (proposed) Order** upon each of the persons/entities named below by mailing to each of 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:

Katherine T. Purkat
12 Mesabi Drive
Virginia, MN 55792

Mr. Peter C. Greenlee
Greenlee Law Office
PO Box 1067
Twig, MN 55791

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

Ford Motor Credit Company
c/o Stewart, Zlimen & Jungers, Ltd.
430 Oak Grove Street #200
Minneapolis, MN 55403

Dated this 20th day of October, 2004.

/e/ Bonnie K. Vanderpool
Bonnie K. Vanderpool

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 04-50769 RJK

KATHERINE T. PURKAT,

Debtor.

ORDER

The above-captioned matter came before the Court on November 29, 2004, on motion by the Chapter 7 trustee, Robert R. Kanuit, seeking an order requiring the debtor turn over property, specifically: copy of debtor's bank account statement from Wells Fargo indicating the balance in her bank account as of the filing date of July 2, 2004.

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,

That the debtor shall turn over to the trustee not later than December 29, 2004, a copy of debtor's bank account statement from Wells Fargo indicating the balance in her bank account as of the filing date of July 2, 2004.

Dated this _____ day of _____, 2004.

Honorable Robert J. Kressel
United States Bankruptcy Judge