

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
BAY CITY

IN RE: Kevin W. Kulek

Chapter 7 Petition  
16-21030-dob  
Honorable Daniel Opperman

\_\_\_\_\_  
RANDALL L. FRANK, TRUSTEE,  
Plaintiff,

Adversary Case Number  
16-2073  
Honorable Daniel Opperman

V

AMANDA LYNN KULEK,  
ALSO KNOWN AS  
AMANDA L. KULEK AND  
AMANDA KULEK,  
Defendant.

\_\_\_\_\_  
Keith M. Nathanson, P41633  
Special Litigation Counsel to Randall L. Frank, Trustee  
Attorney for Plaintiff  
Keith M. Nathanson, PLLC  
2745 Pontiac Lake Road  
Waterford, MI 48328  
(248) 436-4833  
[kn@nathanson-law.com](mailto:kn@nathanson-law.com)

Jaimie D. Knickerbocker, P77491  
Attorney for Defendant  
120 West Exchange Street, Suite 104  
Owosso, MI 48867-2834  
(989) 472-4242  
[jaimie@jdelawoffice.com](mailto:jaimie@jdelawoffice.com)

**F.R.CIV.P. 12(f) MOTION TO STRIKE AFFIRMATIVE DEFENSES**

NOW COMES Plaintiff, Randall L. Frank, Trustee, by and through his attorneys, Keith M. Nathanson, PLLC, and for motion for sanctions pursuant to B.R. 9011, states as follows:

1. Plaintiff initiated the instant adversary complaint against Defendant on September 16, 2016.
2. Defendant filed her answer to the complaint on October 14, 2016. See Exhibit "A" attached.
3. Defendant retained Counsel shortly after the answer was filed.
4. The answer has not been amended, withdrawn or otherwise changed.
5. The time for amendments pursuant to the parties' Rule 26(f) Conference and subsequent scheduling order of this Court, issued on November 18, 2106 has passed.
6. Defendant's deposition was taken in the instant matter on January 30, 2017
7. Defendant in her answer, listed twenty-one affirmative Defenses.
8. Defendant in her deposition testified that her lawyer, John Emaus, who is not her Counsel in this action, assisted her in preparing the answer.
9. Defendant testified that:
  - a. She had no idea what the first affirmative defense was nor any idea what F.R.Civ.P. 12(b)(6) was (Deposition, page 29-30);
  - b. She had no facts to support affirmative defense number 1 (Deposition, page 30);
  - c. She had no idea what the 'business judgment rule' was (Affirmative Defense number 2) (Deposition, page 31-32);

- d. She had no facts to support affirmative defense number two (Deposition, page 32)
- e. She had no idea what the 'doctrine of setoff or doctrine of recoupment' were (Affirmative Defense number 3, deposition, page 32);
- f. She had no facts to support affirmative defense number three (Deposition, page 32);
- g. She had no idea what 'reasonably equivalent value' was (Affirmative Defense number 4) (Deposition, page 32-33);
- h. She had no facts to support affirmative defense number four (Deposition, page 33);
- i. She had no idea what Affirmative Defense number 5, entitled "No Damage" meant (Deposition, page 33-34);
- j. She had no facts to support Affirmative Defense number 5 (Deposition, page 34);
- k. She had no idea what Affirmative Defense number 6, entitled "Duplicative Claims" meant (Deposition, page 34);
- l. Her "facts" to support affirmative defense number six are "Just that I am not my husband or my husband's business" (Deposition, page 34);
- m. She had no idea what Affirmative Defense number 7, entitled "Waiver" was (Deposition, page 34-35);
- n. She has no facts to support that affirmative defense (Deposition, page 35);
- o. She had no idea what Affirmative Defense number 8, entitled "Estoppel" is (Deposition, page 35);

- p. Her “facts” to support affirmative defense number eight are “I’m not my husband or his business, which is what I was being sued for” (Deposition, page 35);
- q. She has no idea what Affirmative Defense number 9, entitled “Laches” is (Deposition, page 35);
- r. Her “facts” to support affirmative defense number 9 are the same as above are “Just that I am not my husband or my husband’s business” (Deposition, page 35);
- s. In response to questioning about affirmative defense number 11, “Exempt Property”, Defendant stated her facts were because [the house] “is mine and not my husband”, but could not advise what law she relied upon (Deposition, page 36);
- t. In response to questioning about affirmative defense number 12, “lack of property interest”, Defendant stated that “Me and my husband are two separate people. Other than that, I have no idea”. (Deposition, page 36);
- u. In response to questioning about affirmative defense number 13, “limitation period”, Defendant did not know what §548 of the bankruptcy code was and had no facts to support the affirmative defense (Deposition, page 36-37);
- v. Defendant could not even provide the appropriate “statute of limitation” (Deposition, page 37);
- w. In response to questioning about affirmative defense number 14, “standing”, Defendant stated “Probably because I have no clue. I have no idea” (Deposition, page 37), and when asked what facts Defendant had to support

- the affirmative defense, Defendant answered “no idea” (Deposition, page 37-38);
- x. In response to questioning about affirmative defense number 15, “bona fide purchaser”, Defendant stated she did not know what a bona fide purchaser was (Deposition, page 38), and that it was “in there” because “It’s probably in there because I paid for my house” (Deposition, page 38);
  - y. In response to questioning about affirmative defense number 16, “good faith rule”, Defendant had “no idea” what the affirmative defense means (Deposition, page 39); and had no facts in support of it (Deposition, page 39);
  - z. In response to questioning about affirmative defense 17, “improper party”, Defendant responded “I shouldn’t be sued because of my husband” (Deposition, page 39);
  - aa. In response to questioning about affirmative defense 18, “jurisdiction”, Defendant stated “... I don’t know what any of the affirmative actions [sic] are” (Deposition, page 40);
  - bb. In response to questioning about affirmative defense number 19, “reasonably equivalent value”, Defendant when asked what that meant, answered “No idea” and that she had no facts to support the affirmative defense (Deposition, page 40);
  - cc. In response to questioning about affirmative defense number 20, “state law preemption”, Defendant did not know what MCL 557.1 was and her facts in support were because “I don’t know” (Deposition, page 40-41);

dd. In response to questioning about affirmative defense number 21, “tenancy in the entirety”, Defendant did not what the “UFTA” was [as cited in her affirmative defense] and her facts were “I reside there. I live there. I pay the bills. I don’t know” (Deposition page 41);

10. Pursuant to F.R.Civ.P. Rule 12(f), this Honorable Court may strike from any pleading, an insufficient defense.

11. Defendant has clearly indicated she does not know what any of the affirmative defense mean, nor does she have any factual support for any of the defense.

12. With no reason for including the affirmative defenses, nor any factual support, the affirmative defenses cannot be anything other than frivolous and in violation of F.R.Civ.P. Rule 11 and Bank.R.Civ.P. Rule 9011 and must be stricken pursuant to F.R.Civ.P. Rule 12(f).

13. Counsel for Trustee forwarded this motion to Defendant’s Counsel on February 28, 2017, and sought concurrence, however Defendant’s Counsel refused to concur in the relief requested.

WHEREFORE Plaintiff moves this Honorable Court to enter an order striking the affirmative defenses of Defendant in total.

/s/ Keith M. Nathanson

Keith M. Nathanson, P41633

Special Litigation Counsel to Randall L. Frank, Trustee

Attorney for Plaintiff

Keith M. Nathanson, PLLC

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Dated: March 23, 2017

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**PROPOSED ORDER STRIKING AFFIRMATIVE DEFENSES OF DEFENDANT**

**UNDER F.R.CIV.P. 12(f)**

This matter having come before this Honorable Court upon Motion of Counsel for Trustee, and the Court being first duly advised in the premises:

IT IS HEREBY ORDERED that the affirmative defenses of Defendant are hereby stricken in total.

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United States Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
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**NOTICE OF F.R.CIV.P. 12(f) MOTION TO STRIKE AFFIRMATIVE DEFENSES**

Plaintiff, Randall L. Frank, Trustee has filed papers with the court to strike  
Defendant's Affirmative Defenses under F.R.Civ.P. 12(f).

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the court to strike the answers pursuant to F.R.Civ.P. 12(f), or if you want the court to consider your views on the motion, within 18 days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:<sup>1</sup>

**United States Bankruptcy Court**  
111 First Street, Bay City, MI 48708

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also send a copy to:

Trustee Keith M. Nathanson, Special Litigation Counsel to Randall L. Frank,  
2745 Pontiac Lake Road, Waterford, MI 48328

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

**If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.**

Date: 3/23/2017

Signature /s/ Keith M. Nathanson, P41633

Keith M. Nathanson, P41633  
2745 Pontiac Lake Road  
Waterford, MI 48328  
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<sup>1</sup> Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e)

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WHEREFORE Plaintiff moves this Honorable Court to enter an order striking the affirmative defenses of Defendant in total.

/s/ Keith M. Nathanson

Keith M. Nathanson, P41633

Special Litigation Counsel to Randall L. Frank, Trustee

Attorney for Plaintiff

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Dated: March 23, 2017

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\_\_\_\_\_  
**CERTIFICATE OF SERVICE**

Keith M. Nathanson, being first duly sworn, states that on March 23, 2017, he did serve by ECF/PACER notice/filing:

- Motion to Strike Affirmative Defenses under F.R.Civ.P. 12(f), Brief in Support of Motion, Notice of Motion & Opportunity to Object, Certificate of Service, Proposed Order, Affidavit of Trustee Counsel

Upon Jaimie D. Knickerbocker, at the address listed in the ECF/PACER notification system.

Respectfully submitted,

/s/ Keith M. Nathanson  
Keith M. Nathanson, P41633  
Special Litigation Counsel for the Chapter 7 Trustee  
Keith M. Nathanson, PLLC  
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**AFFIDAVT OF COUNSEL FOR TRUSTEE**

Keith M. Nathanson, being first duly sworn states that:

1. I am counsel for Trustee in the instant adversary proceeding.
2. The quotes listed in the motion and brief were taken directly from the deposition transcript of Defendant, Amanda Kulek, and accurately represent her deposition testimony as transcribed by the Court Reporter.

Further the Affiant Sayeth Not.

/s/ Keith M. Nathanson  
Keith M. Nathanson

Subscribed and sworn to before me on March 23, 2017

/s/ Monica Dinko  
Monica Dinko, Notary Public, Oakland County, Michigan  
My Commission Expires: 10/19/19