

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

NOTICE OF MOTION AND MOTION
FOR DISMISSAL OR CONVERSION

WILL H DAVIS

BARBARA D DAVIS

Debtor(s)

Case No. - BKY 03-47469 NCD

Chapter 13

TO: All parties in interest under Local Rule 9013-3.

1. Jasmine Z. Keller, (the "Trustee"), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 a.m., or as soon thereafter as counsel may be heard, on **September 2, 2004**, in U.S. Bankruptcy Court, Courtroom 7 West, Seventh Floor, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than August 30, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than August 24, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). ***Unless a response opposing the motion is timely filed, the court may grant the motion without a hearing.***

4. The Court has jurisdiction of this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This motion arises under 11 U.S.C. § 1307 and Fed. R. Bankr. P. 1017. This motion is filed under Fed. R. Bankr. P. 9013 and Local Rule 9013-1 *et seq.* The petition commencing this chapter 13 case was filed on 10/24/03. The case is now pending in this Court.

5. If testimony is necessary as to any facts relevant to this motion, Deborah Miles, Chapter 13 Trustee's Office, 12 South 6th Street, Suite 310, Minneapolis, Minnesota, will testify on behalf of the Trustee.

6. The Trustee requests that this case be dismissed or converted to a Chapter 7 case because Debtor(s) failed to make payments to Trustee thereby creating current defaults or arrearages on plan payments of \$2380.00 as of August 12, 2004. The last payment credited to the Debtor(s)' account was on 7/1/2004. Total payments of \$8330.00 have been made to date hereof. Required monthly payments are currently \$1190.00.

The August, 2004 payment is not included in the listed default amount. Any payment less than the amount required to bring the plan current will not prevent dismissal of this case.

WHEREFORE, the Trustee requests an order granting the relief prayed for herein.

Jasmine Z. Keller, Trustee

Dated: August 12, 2004

/e/ Thomas E. Johnson
Thomas E. Johnson #52000
Margaret H. Culp #180609
Counsel for Chapter 13 Trustee
12 South 6th Street., Suite 310
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Deborah Miles, an employee of the Trustee, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: August 12, 2004

/e/ Deborah Miles
Deborah Miles
Chapter 13 Office

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

WILL H DAVIS
BARBARA D DAVIS
Debtor(s)

UNSWORN DECLARATION OF
PROOF OF SERVICE

Case No. - BKY 03-47469 NCD
Chapter 13

I, Deborah Miles, declare that on the date stated below I served a copy of the Notice of Motion and Motion for Dismissal or Conversion and Unsworn Declaration of Proof of Service, upon each of the entities named below by mailing to each of them a copy thereof, by enclosing same in an envelope with first-class mail, postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Copy to Debtor(s) addressed to:

WILL H DAVIS
BARBARA D DAVIS
6845 18TH AVE S
RICHFIELD, MN 55423

Copy to Debtor's Attorney addressed to:

Craig Cook
Midwest Legal Counsel
1821 University Ave, Suite S-217
St. Paul, MN 55104-

Additional Copy(s) addressed to:

Brice, Vander Linden & Wernick, PC
PO Box 829009
Dallas TX 75382-9009
RAMSEY LAW FIRM, P.C.
PO BOX 201347

ARLINGTON TX 76006-

Household Bank and its Assigns by
eCast Settlement Corp., as its agent
PO Box 35480
Newark NJ 07193-5480

Copy to United States Trustee (By electronic means):

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

and I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: August 12, 2004

/e/ Deborah Miles
Deborah Miles
Chapter 13 Office