

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

*In re: Robert A. Clarin
and Donna J. Clarin,*

Chapter 7
Bky. No. 04-40456

Debtor(s).

**NOTICE OF HEARING AND MOTION
OBJECTING TO CLAIM OF CREDITOR
(CLAIM NO. 12)**

TO: Entities specified in Local Rule 3007-1.

1. Terri A. Georgen-Running, trustee (the "Trustee") of the bankruptcy estate of the above-named Debtor(s) moves the Court for the relief requested below and gives notice of hearing.

2. A hearing will be held on this motion by the Honorable Nancy C. Dreher, Courtroom No. 7 West, 7th Floor - United States Courthouse, 300 S. Fourth Street, Minneapolis, Minnesota on **November 3, 2004 at 10:30 a.m.**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than October 27, 2004, which is seven (7) days before the hearing date, including intermediate Saturdays, Sundays and legal holidays, or filed and served by mail not later than October 22, 2004, which is ten (10) days before the hearing date, including intermediate Saturdays, Sundays and legal holidays. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on February 2, 2004 and is now pending before this court.

5. This motion arises under 11 U.S.C. §§502 and 704, FED. R. BANKR. P. 3002 and 3007 and Local Rule 3007-1. This motion is filed under FED. R. BANKR. P. 9014 and 9014 and Local Rule 9013. The Trustee requests relief with respect to Claim No. 12 filed in the Debtor(s)' case.

6. Don Gervais Welding ("Claimant") filed a proof of claim on May 27, 2004, asserting an unsecured non-priority claim in the amount of \$240.00 (the "Claim"). The Claim reflects that the basis for the obligation is for money loaned/services provided/goods sold to Aitkin County Pallet, Inc. (a corporation owned by the Debtor(s)). There is no documentation to establish that the Debtors personally guaranteed the Claim.

7. As a result, the trustee is unable to determine whether the Claim is properly filed in this case.

WHEREFORE, the Trustee respectfully requests that the Court disallow Claim No. 12 and such other relief as may be just and equitable.

Dated: September 29, 2004

GEORGEN-RUNNING LAW FIRM
A Professional Corporation
By: /e/ Terri A. Georgen-Running
Terri A. Georgen-Running (No. 238338)
P.O. Box 16355
St. Paul, MN 55116
(651) 699-6980
(651) 292-1234 *Facsimile*

ATTORNEYS FOR THE TRUSTEE

VERIFICATION. I, Terri A. Georgen-Running, the moving party named in the foregoing notice of hearing and motion declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 29, 2004

/e/ Terri A. Georgen-Running
Terri A. Georgen-Running, Trustee

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA (MINNEAPOLIS)		PROOF OF CLAIM
Name of Debtor ROBERT A CLARIN DONNA J CLARIN		Case Number 04-40456
<p>NOTE: This form should not be used to make a claim for an administrative expense arising at the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.</p>		
Name of Creditor (The person or other entity to whom the debtor owes money or property): DON GERVAIS WELDING		 THIS SPACE IS FOR COURT USE ONLY
Name and Address where notices should be sent: DON GERVAIS WELDING 31819 HWY 65 MCGREGOR MN 55760		
Telephone Number:		
Account or other number by which creditor identifies debtor:	Check here if <input type="checkbox"/> replaces this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
<p>1. Basis for Claim</p> <input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. §1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ <input type="checkbox"/> Unpaid compensation for services performed from _____ to _____ (date) (date)		
2. Date debt was incurred: <u>3/18/03 & 4/8/03</u>		3. If court judgment, date obtained:
<p>4. Total Amount of Claim at Time Case Filed: \$ <u>240.00</u> (unsecured) (secured) (priority) <u>240.00</u> (Total)</p> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.</p> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<p>5. Secured Claim.</p> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). <p>Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____</p> <p>Value of Collateral: \$ _____</p> <p>Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____</p>		<p>7. Unsecured Priority Claim.</p> <input type="checkbox"/> Check this box if you have an unsecured priority claim
<p>6. Unsecured Nonpriority Claim \$ _____</p> <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,925)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$ 2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
<p>8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.</p> <p>9. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.</p> <p>10. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>		Send claims to: U.S. Bankruptcy Court 301 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415
Date <u>5/18/04</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any). <u>DON GERVAIS OWNER</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

For CHAPTER 7, 11 or 12 CASES filed on or after April 1, 2004



DON GERVAIS WELDING

31819 HWY.65
MCGREGOR, MINNESOTA 55760
(218) 768-3203
FAX (218) 768-7031

CUSTOMER'S ORDER NO.		PHONE		DATE		
				3-18-03		
NAME Littler Co pallet co						
ADDRESS						
PAY # 320-684-2764						
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RET'D.	PAID OUT
QTY.	DESCRIPTION				PRICE	NET 10 AMOUNT
	Repair DeBarker 3-18-03					
	3 hrs					120.00
	4-8-03 Weld Broken DeBarker Parts 3 hrs					120.00
RECEIVED BY					TAX	
					TOTAL	240.00

B PRODUCT 610

All claims and returned goods must be accompanied by this bill.

3016

To Reorder:
800-225-6380 or nebs.com

Thank You

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

*In re: Robert A. Clarin
and Donna J. Clarin,*

Chapter 7
Bky. No. 04-40456

Debtor(s).

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Terri A. Georgen, declare that on the date indicated below, I served the following:

(1) Notice of Hearing and Motion Objecting to Claim of Creditor; (2) Unsworn Declaration for Proof of Service; and (3) Proposed Order

upon each of the entities named below, by mail (unless otherwise indicated 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 St. Paul, Minnesota, addressed to each of them as follows:

UNITED STATES TRUSTEE
1015 U.S. COURTHOUSE
300 SOUTH FORTH STREET
MINNEAPOLIS, MN 55415

DON GERVAIS WELDING
31819 HWY 65
MCGREGOR, MN 55760

ROBERT A. CLARIN
DONNA J. CLARIN
31095 BAUGH ST. NW
PRINCETON, MN 55371

ROBERT KALENDA, ESQ.
919 W. ST. GERMAIN, STE 2000
ST. CLOUD, MN 56301

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

Date: September 29, 2004

e/ Terri A. Georgen-Running

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

*In re: Robert A. Clarin
and Donna J. Clarin,*

Chapter 7
Bky. No. 04-40456

Debtor(s).

ORDER

At Minneapolis, Minnesota, _____, 2004

The above-entitled matter came before the Court on the Objection to Claim of Creditor filed by the Trustee. Appearances, if any, were as noted upon the record. Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. Claim No. 12 is disallowed.

Judge Nancy C. Dreher
UNITED STATES BANKRUPTCY JUDGE