

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-43612-NCD

Chapter 13

Dennis J. Sovich and Roberta J Sovich,

***OBJECTION TO CONFIRMATION***

Debtor(s).

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TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Bank One Wisconsin, a secured creditor of Debtor(s), by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor(s).

2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and Bank One Wisconsin requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.

3. Hearing on confirmation of the Plan is scheduled for **10:30 am on Thursday, September 2, 2004**, before the Honorable Nancy C. Dreher, in Courtroom No. 7 West, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel can be heard.

4. The petition commencing this Chapter 13 case was filed on June 29, 2004 and the case is now pending in this Court.

5. Bank One Wisconsin holds a valid, perfected interest in a 1998 Plymouth Voyager, vehicle identification number 2P4FP25B3WR762714 (the "Vehicle"). The value of the Vehicle is \$3,600.00.

6. Copies of Bank One Wisconsin's agreement with Debtor(s) (the "Contract") and evidence of perfection of Bank One Wisconsin's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The balance due to Bank One Wisconsin as of the petition date totals \$11,371.35 together with interest accruing at the contract rate of 14.65%. The fair market value of the Vehicle is \$3,600.00.

Accordingly, the claim of Bank One Wisconsin should be treated as secured to the extent of \$3,600.00.

8. The Plan, however, provides for (i) Bank One Wisconsin's secured claim of \$1,500 with no interest; (ii) total payment on Bank One Wisconsin's secured claim of \$1,500.00; and (iii) monthly payments of commencing in month 7.

9. Using the plan's rate of interest, the Plan fails to satisfy Bank One Wisconsin's secured claim plus interest utilizing the payments set forth by Debtor(s).

10. Bank One Wisconsin objects to the Plan because the secured claim is undervalued, the interest rate is not sufficient and payments do not begin until month 7 while the vehicle is depreciating.

11. The Plan does not comply with the provisions of Chapter 13.

12. The Plan does not provide Bank One Wisconsin with adequate protection of its interest in the vehicle.

13. Movant gives notice that it may, if necessary, call T. Johnson or another representative of Bank One Wisconsin to testify at the hearing.

14. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Bank One Wisconsin respectfully requests this Court to enter an order denying

confirmation of the Debtor' proposed plan and such other further relief as is just and equitable.

Dated: July 12, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-43612-NCD  
Chapter 13

Dennis J. Sovich and Roberta J Sovich,  
  
Debtor(s).

---

**VERIFICATION**

I, Tracy Johnson, a Bankruptcy Specialist of Bank One Wisconsin declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Tracy Johnson  
Bankruptcy Specialist  
Bank One Wisconsin

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Case No. 04-43612-NCD  
Chapter 13

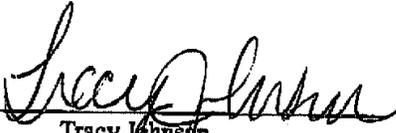
Dennis J. Sovich and Roberta J Sovich,

Debtor(s).

VERIFICATION

I, Tracy Johnson, a Bankruptcy Specialist of Bank One Wisconsin declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

Dated: 7/9/04



Tracy Johnson  
Bankruptcy Specialist  
Bank One Wisconsin

**NETS INSTALLMENT CONTRACT AND SECURITY AGREEMENT**

Seller: **FOREST LAKE C/P DOODS INC., 321 18TH STREET, FOREST LAKE HI 95025**

Buyer: **DENNIS JAMES SOVICH, ROBERTA JOCLAINE SOVICH, 7499 N IMPERIAL DR, BOSTON, BROCKTON MA 01909**

No. \_\_\_\_\_ Date: **MARCH 27th, 2001**

*"We" and "us" mean the Seller above, its successors and assigns. "You" and "your" mean the Buyer above, and successors, heirs and assigns."*

**SALVAGE:** You agree to purchase from us, new and used Motor Vehicles (Vehicles) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Year: **1998** Make: **PLYMOUTH** VIN: **2F4FP28B3NR762714** Other: \_\_\_\_\_  
 Purchased Metal: **VOYAGER**  New  Used

Description of Trade-In: **1998 DODGE STRATUS** **1A100044178D27K797**

**SECURITY:** To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium rebates of any insurance and service contracts purchased with this Contract.

**PROCEEDS TO PAY AND PAYMENT TERMS:** You promise to pay on the principal amount of \$ **18564.66**, plus finance charges starting on the unpaid balance at the rate of **14.99%** per year from today's date until paid in full. Finance charges accrue on a **365** day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the **TRUTH IN LENDING DISCLOSURE**. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

**LOAN ADMINISTRATION FEE:** You agree to pay an additional, non-refundable loan administration fee of \$25.00 that will be  paid in cash.  paid pro rata over the contract term.  withheld from the proceeds of this fee is withheld from the proceeds, the amount is included in the principal sum.

**DOWN PAYMENT:** You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, vehicle and not trade-in value described in the **FINANCIALIZATION OF AMOUNT FINANCED**.  You agree to make deferred payments as part of the cash down payment as indicated in your Payment Schedule.

**TRUTH IN LENDING DISCLOSURES** **11620052002**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of loans equals an APR of <b>14.99%</b>	The dollar amount the credit will cost you <b>7877.94</b>	The amount of credit provided to you or on your behalf <b>18564.66</b>	The amount you will have to pay when you have made all scheduled payments <b>26432.60</b>	The total cost of your purchase of this vehicle, including your down payment of <b>1800.00</b>

Payment Schedule: Your payment schedule will be **MONTHLY, BEGINNING: MAY 11th, 2001**

Number of Payments	Amount of Payment
<b>60</b>	<b>440.71</b>

Security: You are giving a security interest in the Motor Vehicle purchased.  
 **Late Charge:** If a payment is more than **10** days late, you will be charged **\$ 7.00** or **5 PERCENT OF UNPAID BALANCE**, whichever is greater. This amount may increase so as to always be the highest amount allowed by law under Min. Stat. § 47-38.  
 Prepayment: If you pay off this Contract early, you will not have to pay a penalty.  
 If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.  
 Contract Provisions: You agree to the terms of this Contract for any additional information about repayment, default, any required payments before the scheduled date, and assignment rights and penalties.

**CREDIT INSURANCE:** Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and are not included in the amount you pay and agree to pay the essential premium. If you want such insurance, we will attempt to refer you to an agent for coverage. We are quoting below ONLY the coverage you have chosen to purchase.

Credit Life Insured: **ROBERTA JOCLAINE SOVICH**  
 Single  Joint Term: \$ **795.00** Term: **60**  
 Credit Disability Insured: **N/A**  
 Single  Joint Term: \$ **N/A** Term: **N/A**

**FINANCIALIZATION OF AMOUNT FINANCED**

Vehicle Price (incl. sales tax of <b>264.65</b> )	\$ <b>17335.13</b>
Service Contract, Paid to: <b>LANCINI</b>	\$ <b>1481.00</b>
Cash Price	\$ <b>15024.13</b>
Manufacturer's Rebate	\$ <b>N/A</b>
Cash Down Payment	\$ <b>1800.00</b>
Deferred Down Payment	\$ <b>N/A</b>
a. Total Cash/Trade-In	\$ <b>1800.00</b>
b. Trade-In Allowance	\$ <b>10500.00</b>
c. Loan Amount (incl. b.)	\$ <b>10500.00</b>
Point fee: <b>APRILCREDIT</b>	\$ <b>N/A</b>
d. Net Trade-In (b. minus c.)	\$ <b>0.00</b>
e. Net Cash/Trade-In (a. plus d.)	\$ <b>1800.00</b>
Down Payment (a. minus e. if negative)	\$ <b>0.00</b>
Unpaid Balance of Cash Price	\$ <b>17335.13</b>
Unpaid Balance of Service Contract	\$ <b>110.80</b>
Paid to Public Official - Filing Fee	\$ <b>705.05</b>
Insurance Premiums*	\$ <b>N/A</b>
Amount in Prepaid (if a. is negative)	\$ <b>500.00</b>
Tax: <b>FOREST LAKE C/P DOODS INC.</b>	\$ <b>25.00</b>
TC:	\$ <b>N/A</b>
To:	\$ <b>N/A</b>
Total Other Charges/Amounts Pd. to Others	\$ <b>1340.32</b>
Less: Prepaid Finance Charges	\$ <b>N/A</b>
Amount Financed	\$ <b>18564.66</b>

\*We may retain or receive a portion of this amount.

**NOTICE TO BUYER**  
 (1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a complete title-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charges. (4) IMPORTANT: THIS MAY BE A BIDDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

**ASSIGNMENT:** This Contract and Security Agreement is assigned to **BAKE ONE FINANCIAL** (the Assignee), phone **(415) 228-2301**. This assignment is made  under the terms of a separate agreement.  under the terms of the ASSIGNMENT BY SELLER on page 8.  This assignment is made with reserves.

Signed By: **[Signature]** Date: **03/27/2001**

Signed By: **[Signature]** Date: **03/27/2001**

Signed By: **[Signature]** Date: **03/27/2001**

MINNESOTA DEPARTMENT OF PUBLIC DRIVER & VEHICLE SERVICES DIVISION  
 443 MINNESOTA ST. ST. PAUL, MN 55103  
 CONFIRMATION OF LIEN PERFECTION

1210002417202 78 797 OPEN

8/1034  
 88 PLYMOUTH VOYAGER A/S  
 DENNIS JAMES SOVICH

SOVICH DENNIS JAMES  
 SOVICH ROBERTA JOLAI  
 7449 N IMPERIAL DR #201  
 BROOKLYN PARK MN 55443

EVJ014  
 1ST SECURED PARTY  
 LIEN HOLDER

Year	98	PLVM	SVVOF	K1030N664
Make		Model		Tip No.
VIN	2P4FP25BJMR762714		03/27/01	NO
		Security Code		Color

RETAIN THIS DOCUMENT - See reverse side of this form for removing this lien.

BANK ONE WISCONSIN  
 PO BOX 37264  
 LOUISVILLE KY 40233-7264

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.04-43612-NCD

Chapter 13

Dennis J. Sovich and Roberta J Sovich,

Debtor(s).

***MEMORANDUM IN SUPPORT OF  
OBJECTION TO CONFIRMATION***

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Bank One Wisconsin submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

Bank One Wisconsin holds a valid, perfected interest in a 1998 Plymouth Voyager, vehicle identification number 2P4FP25B3WR762714 (the "Vehicle").

The balance due to Bank One Wisconsin as of the petition date totals \$11,371.35 together with interest accruing at the contract rate of 14.65%. The fair market value of the Vehicle is \$3,600.00. Accordingly, the claim of Bank One Wisconsin should be treated as secured to the extent of \$3,600.00. The Plan, however, provides for (i) Bank One Wisconsin's secured claim of \$1,500 with no interest; (ii) total payment on Bank One Wisconsin's secured claim of \$1,500.00; and (iii) monthly payments of commencing in month 7.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the value of the vehicle is substantially below the replacement value set forth in *Rash* and this circuit's applicable decisions of *Green* and *Trimble*. In addition, the lack of interest renders the plan non-

confirmable in accordance with the Supreme Court's decision in *Till*. Finally, there is no equity in this vehicle and waiting until month 7 to begin payments results in an unconstitutional taking of Bank One's lien in the vehicle and fails to provide for adequate protection or compensation for the use of the vehicle by Debtor as contemplated by Section 363. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

For all of the reasons set forth herein, Bank One Wisconsin respectfully requests that the Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: July 12, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Dennis J. Sovich and Roberta J Sovich

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-43612-NCD

Bradley J. Halberstadt, agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Objection to Confirmation** 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 Roseville, Minnesota addressed to each of them as follows:

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United States Trustee	(Attorney for Debtor(s))	(Trustee)
Suite 1015	Michael C. Mjoen	Jasmine Keller
300 South 4th Street	7825 Washington Ave., Ste. 500	12 S 6th Street Suite 310
Minneapolis, MN 55415	Bloomington, MN 55439	Minneapolis, MN 55402

(Debtor(s))  
Dennis J. Sovich  
10254 Hanson Blvd.  
Coon Rapids, MN 55433

Roberta J Sovich  
10254 Hanson Blvd.  
Coon Rapids, MN 55433

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

Dated: July 12, 2004

Signed: /e/ Bradley J. Halberstadt

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

---

In re:

Case No. 04-43612-NCD  
Chapter 13

Dennis J. Sovich and Roberta J Sovich,

Debtor(s).

---

**ORDER**

This matter came before this Court for confirmation of the Chapter 13 plan of reorganization of Debtor(s). Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Chapter 13 plan of Debtor(s) is denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Nancy C. Dreher  
United States Bankruptcy Judge

Bankruptcy Solutions  
Legal Services, PLC

PO Box 270463  
St. Paul, MN 55127  
Phone: (612) 251-7979  
Facsimile: (651) 482-6195

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July 12, 2004

TO: Parties on the attached list

Re: *In re Dennis J. Sovich and Roberta J Sovich*  
Bky. No. 04-43612-NCD

Enclosed and served upon you, please find the following documents:

- (i) Objection to Confirmation of Bank One Wisconsin;
- (ii) Affidavit;
- (iii) Memorandum in Support of Objection;
- (iv) Proposed Order; and
- (v) Declaration for Proof of Service.

Very truly yours,

BANKRUPTCY SOLUTIONS LEGAL SERVICES, PLC

Bradley Halberstadt

Enclosures

**DOCKET ENTRY FORM**  
**BSLS Account Number: 14531**  
**Client Account Number: 440451519901278797**  
**Case No. 04-43612-NCD**

**CLIENT**  
**NAME**

**CASE**  
**NAME**

**CLIENT**  
**NUMBER**

**CASE**  
**NUMBER**

**Bank One Wisconsin**

**Dennis J. Sovich and Roberta  
J Sovich**

**Bank One Wisconsin**

ATTORNEYS AND OTHERS TO BE NOTIFIED (please mark)

**BH**

<u>DATE</u>	<u>TIME</u>	<u>RE- MINDER DATE</u>	<u>EVENT DESCRIPTION</u> (judge's name, if applicable)	<u>EVENT PLACE</u>
9/2/2004	10:30:00 AM		<b>Objection to Confirmation Nancy C. Dreher Courtroom #7 West</b>	<b>300 South Fourth Street Minneapolis, Minnesota 55415</b>

**Did you e-mail client with hearing date? \_\_\_\_\_**

Did you mark hearing date on master calendar? \_\_\_\_\_

**Bankruptcy Solutions Legal Services**

PO Box 270463  
St. Paul, MN 55127

Dennis J. Sovich and Roberta J Sovich  
10254 Hanson Blvd.  
Coon Rapids, MN 55433

**Bankruptcy Solutions Legal Services**

PO Box 270463  
St. Paul, MN 55127

Michael C. Mjoen  
7825 Washington Ave., Ste. 500  
Bloomington, MN 55439

**Bankruptcy Solutions Legal Services**

PO Box 270463  
St. Paul, MN 55127

T. Johnson  
Bank One Wisconsin  
c/o Javich, Block & Rathbone  
1300 East Ninth Street  
14th Floor  
Cleveland, OH 44114-1503

**Bankruptcy Solutions Legal Services**

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Jasmine Keller  
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Minneapolis, MN 55402

**Bankruptcy Solutions Legal Services**

PO Box 270463  
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United States Trustee  
Suite 1015  
300 South 4th Street  
Minneapolis, MN 55415

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