

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Jonathan M Estebo,

Debtor(s).

BKY 04-43963

Chapter 13 Case

**NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF
CHAPTER 13 PLAN AND FOR DISMISSAL OR CONVERSION OF CASE**

TO: All parties in interest pursuant to Local Rule 9013-3:

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), by and through her undersigned attorneys, 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. on October 7, 2004, in Courtroom No. 7 West, United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota.
3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on October 6, 2004 which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than October 4, 2004, which is three business days before the time set for the hearing. **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 motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 13 case was filed on July 16, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. § 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3015-3, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may apply. Movant requests relief with respect to denial of confirmation of the debtor's proposed Chapter 13 plan dated July 8, 2004 (the "Plan") and for dismissal or conversion of the case.
6. On his Statement of Financial Affairs, item 3, the debtor discloses a payment of \$40,000 to his mother within 90 days prior to the commencement of this case, "for a short-term loan to finance our home."

7. In response to the Trustee's request for further information concerning this transaction, the debtor provided the Trustee with a collection of documents attached hereto as an exhibit and incorporated by reference herein, as follows:

- a) copy of front and back of check # 1383 from debtor's mother to debtor and his wife, dated March 25, 2004, in the amount of \$40,000.
- b) copy of front and back of deposit ticket showing deposit of above check into debtor's and wife's US Bank account, dated March 26, 2004.
- c) copy of front and back of check # 5913, drawn on debtor's and wife's US Bank checking account, in the sum of \$37,030.94, dated March 29, 2004.
- d) copy of US Bank check # 506844681 dated March 29, 2004, in the sum of \$37,024.94, payable to debtor and his wife.
- e) copy of 2-page HUD-1 settlement statement for the purchase of debtor's and wife's homestead at 2071 Clover Ridge Drive, Chaska, MN dated March 30, 2004 (note "cash from borrower" on line 303, in the amount of the check described in d), above).
- f) copy of disbursement request and authorization for home equity line of credit in favor of debtor and wife, by Inter Savings Bank, in the amount of \$35,740, dated May 5, 2004.
- g) copy of Inter Bank check # 3042276, in the amount of \$32,000, made payable to debtor's mother, dated May 10, 2004.

8. The proposed Chapter 13 plan calls for payments of \$100 per month for 36 months, for a total of \$3,600. The plan funds, net of the Trustee's fee (estimated at 10%), in the sum of \$3,240, would be paid to the debtor's attorney (\$1,250) and the balance (\$1,990) to the debtor's nonpriority unsecured creditors, whose claims total approximately \$45,981.77, a dividend of approximately 5%.

9. The Trustee contends that the debtor's payment of \$32,000 to his mother within one year prior to the date of the filing of this case constitutes an avoidable preference under 11 U.S.C. § 547, and that the amount of the transfer¹ is recoverable for the benefit of the debtor's unsecured creditors.

10. The Plan does not meet the "best interests of creditors" test of 11 U.S.C. § 1325(a)(4), in that the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is less than the amount that would be paid on such claim if the estate of the debtor was liquidated under Chapter 7 of Title 11 on such date, given the existence of the voidable preference.

11. Conversion of this case under 11 U.S.C. § 1307(c) is appropriate so that a Chapter 7 trustee can be appointed to pursue the preference claim on behalf of the estate.

¹ Arguably, since the original unsecured loan was made to the debtor and his wife jointly, only one-half of the subsequent repayment of the loan would be avoidable and recoverable by a trustee. Even assuming, without conceding, that this is true, there is still a voidable preference of \$16,000 that could be recovered, and the Plan pays nowhere near that amount to the debtor's unsecured creditors.

16. If necessary, the debtor and/or his mother may be called to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests an order as follows:

1. Denying confirmation of the debtor's Chapter 13 Plan dated July 8, 2004.
2. Dismissing this case or converting the case to a case under Chapter 7 of Title 11, United States Code, whichever is in the best interests of the debtor's creditors.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: September 29, 2004

/e/ Thomas E. Johnson
Thomas E. Johnson, ID # 52000
Margaret H. Culp, ID # 180609
Counsel for Chapter 13 Trustee
310 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402-1521
(612) 338-7591

VERIFICATION

I, Thomas E. Johnson, employed by Jasmine Z. Keller, Chapter 13 Trustee, the movant 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.

Executed: September 29, 2004

/e/ Thomas E. Johnson

Mariene H. Estebo
 4883 E. Nighthale Ln.
 Gilbert, AZ 85297
 480-641-5377

70-26711 1383

DATE 3-25-04

PAY TO THE ORDER OF Jonathan & Carrie Estebo \$40,000⁰⁰/₁₀₀

forty thousand and 00/100 DOLLARS

BANK ONE
 BANK ONE MONS, NA
 SPRINGFIELD, IL 62701

Mariene Estebo

⑆076100289⑆ 194463352⑈ 1383 ⑈00000000000⑈

CREDITED TO THE ACCOUNT OF
 THE WITHIN NAMED PAYEE

2711 U.S. Bank 2711
 104771255270
 1118 03620

U.S. Bank NA (AM)
 1-800-237-5473
 123600120

025321210100 1204
 22 124 06 01 106 1/5
 9215 6005320 02600021

ROBIN THOMAS
 1002CR 2 P 104771255270
 20040326 000007533234789 40000.00
 20040818001032 CF38448 OPR:48 ROME

CARRIE L ESTEBO
 2071 CLOVER RIDGE DR
 CHASKA MN 55318-2953

2004 JUN 23 A 11: 25
 JACQUELINE ZILLNER, TRUSTEE


COUNTER DEPOSIT

DATE: 3-26-04

ACCOUNT TITLE (PRINT): Jonathan & Carrie Estebo

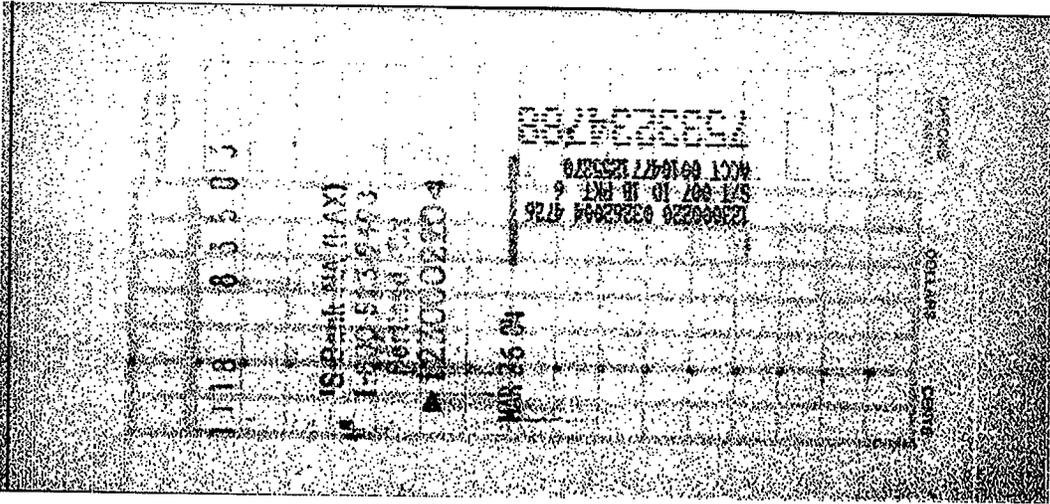
CHECK OR TOTAL FROM OTHER SIDE: 40000.00

SUB TOTAL:

LESS CASH RECEIVED:

ACCOUNT NUMBER: *104771255270 \$ 40000.00

MICR LINE: ⑆560210039⑆ 104771255270⑆ ⑆0004000000⑆



ROBIN THOMAS
 1001CR 2 P 104771255270
 20040326 000007533234788 40000.00
 20040818001032 CF38448 OPR:48 ROME

CARRIE L ESTEBO
 2071 CLOVER RIDGE DR
 CHASKA MN 55318-2953

Jonathan M. Estebo
 Carrie L. Estebo
 2071 Clover Ridge Drive
 Chaska, MN 55318

3/29/04

5913

Pay to the order of US BANK \$37,030.94

Robin Thomas thirty and 94/100 Dollars

US BANK
 MINNESOTA
 (822) US BANKS
 usbank.com

For Robin Thomas

⑆091000022⑆ 104771255270⑆ 5913 ⑆0003703094⑆

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Handwritten: Robin Thomas

STATE Ks D/L
 DL# K01-71-5031
 EXP 2-29-2010
 ISS 2-11-02
 BID 2-20-02

⑆091000022⑆ 104771255270⑆ 5913 ⑆0003703094⑆

ROBIN THOMAS
 1001DR 2 I 104771255270
 20040329 000007048907396 37030.94
 20040818001052 CF37330 OPR:E3 GRUMPY

CARRIE L ESTEBO
 2071 CLOVER RIDGE DR
 CHASKA MN 55318-2953

AUG. 23. 2004 9:49AM

STEWART TITLE OF MN

NO. 4994 P. 2



No. 506844681

83-541
920

DATE: MARCH 29, 2004

THIRTY SEVEN THOUSAND TWENTY FOUR DOLLARS AND 94 CENTS

PAY

\$37,024.94

TO THE ORDER OF: JONATHAN M. ESTEBO AND CARRIE L ESTEBO

PURPOSE/REMITTER:

Drawer: USBank
420

OFFICIAL CHECK

Location: 9508

Issued By Traveler's Express Company, Inc

Drawee First Interstate Bank Helena, MT

AUTHORIZED SIGNATURE

⑈0506844681⑈ ⑆092005411⑆0160010698282⑈

MEGAN

3042276

InterBank
15b
6346 France Ave. S. • Suite 130
Edina, MN 55435-2108
AGENT FOR TRAVELERS EXPRESS

OFFICIAL CHECK

Remittee: ESTEBO PROCEEDS

Pay: THIRTY TWO THOUSAND AND 00/100

PAY TO THE ORDER OF
MARLENE ESTEBO

DATE: 05/10/2004

AMOUNT: \$32,000.00

3042276

ENDORSE HERE

x Marlene Estebos

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
PERFORM ALL THE FINANCIAL INSTITUTION USE

062 20452

MAY 14 2004

0026455702
06172004
0920-0026-7 FRB HELENA
EXT-0742 TRC-0748 PR-06

FEDERAL RESERVE BANK OF HELENA, MONTANA

THIS CHECK IS VOID UNLESS ALL INFORMATION IS PRESENT ON THE FRONT AND BACK OF THE CHECK AND THE OCCASION FOR A MICROFILM COPY OF THIS CHECK IS MADE AVAILABLE TO THE PUBLIC

A. U.S. Department of Housing and Urban Development

B. Type of Loan

FINAL

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FMHA	3. <input checked="" type="checkbox"/> Conv. Unins.
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.	
6. File Number 103496		7. Loan Number 102665
8. Mortgage Ins. Case No.		

Settlement Statement

C. Note:	This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked ("POC") were paid outside the closing: they are shown here for information purposes and are not included in the totals.	
D. Name of Borrower:	Carrie Estebo Jonathon Estebo	
E. Name of Seller:	The Rottlund Company, INC., 3065 Centre Pointe Drive North, Roseville, MN 55113	
F. Name of Lender:	Summit Mortgage Corporation, 13705 First Avenue North, Suite 500, Plymouth, MN 55441	
G. Property Location:	Clover Ridge Village Condominiums, Section 53 2071 Clover Ridge Drive, Chaska, MN 55318	
H. Settlement Agent:	Stewart Title of Minnesota (952) 888-6353	TIN: 41-1334640
Place of Settlement:	1600 W. 82nd Street, Suite 100, Bloomington, MN 55431	
I. Settlement Date:	3/30/2004	Disbursement Date: 3/30/2004

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross amount due from borrower:		400. Gross amount due to seller:	
101. Contract sales price	180,940.00	401. Contract sales price	180,940.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	3,836.94	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance:		Adjustments for items paid by seller in advance:	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109. HOA Dues		409. HOA Dues	
110.		410.	
111.		411.	
112.		412.	
120. Gross amount due from borrower:	184,776.94	420. Gross amount due to seller:	180,940.00
200. Amounts paid by or in behalf of the borrower:		500. Reduction in amount due to seller:	
201. Deposit or earnest money	3,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	144,752.00	502. Settlement charges to seller (line 1400)	5,517.48
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Application fee Credit		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506. Deposit or earnest money	3,000.00
207.		507.	
208. Seller Paid Closing Costs		508. Seller Paid Closing Costs	
209.		509.	
Adjustments for items unpaid by seller:		Adjustments for items unpaid by seller:	
210. City/town taxes		510. City/town taxes	
211. County taxes		511. County taxes	
212. Assessments		512. Assessments	
213. HOA Dues		513. HOA Dues	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total paid by/for borrower:	147,752.00	520. Total reduction in amount due seller:	8,517.48
300. Cash at settlement from/to borrower:		600. Cash at settlement from/to seller:	
301. Gross amount due from borrower (line 120)	184,776.94	601. Gross amount due to seller (line 420)	180,940.00
302. Less amount paid by/for borrower (line 220)	147,752.00	602. Less total reduction in amount due seller (line 520)	8,517.48
303. CASH (X)FROM ()TO BORROWER	37,024.94	603. CASH ()FROM (X)TO SELLER	172,422.52

Settlement Charges		3/29/04 1.881PV	File No 034106493
700.	Total sales/broker commission based on : \$180,940.00 @ 2.7000% = \$4,885.38		
	Division of commission (line 700) as follows:		
701.	\$4,885.38 to Edina Realty		
702.			
703.	Commission paid at settlement \$4,885.38		
704.			4,885.38
705.	Administrative Fee		
706.	Administrative Fee		
800. Items Available in Connection with Loan			
801.	Loan origination fee to Gabriel Financial Group (0.5%)		723.76
802.	Loan discount		
803.	Appraisal fee to Gabriel Financial Group		350.00
804.	Credit report to Gabriel Financial Group		55.00
805.	Lender's inspection fee		
806.	Mortgage insurance application fee		
807.	Assumption fee		
808.	Underwriting Fee		
809.	Flood Certification Fee to Summit Mortgage Corporation		18.50
810.	Tax Service Fee		
811.	Processing Fee to Gabriel Financial Group		495.00
812.	Messenger/Courier to Summit Mortgage Corporation		25.00
813.	Commitment Fee to Summit Mortgage Corporation		595.00
814.	Document Preparation Fee		
815.	Yield Spread Premium .799% to Gabriel Financial Group POCL 1156.57		
900. Items required by lender to be paid in advance			
901.	Interest from 3/30/2004 to 4/1/2004 at \$24,1250/day for 2 days.		48.25
902.	Mortgage insurance premium for		
903.	Hazard insurance premium for		
904.			
905.	VA Funding Fee		
1000. Reserves Deposited with Lender			
1001.	Hazard insurance		
1002.	Mortgage insurance		
1003.	City property taxes		
1004.	County property taxes 2'mo.@ \$50,0000 per mo.		100.00
1005.	Annual assessments (maint.)		
1006.			
1007.			
1008.			
1009.	Aggregate Adjustment		
1100. Title Charges			
1101.	Settlement or closing fee to Stewart Title of Minnesota		250.00
1102.	Abstract or title search		
1103.	Title examination to Advantage Title		130.00
1104.	Title insurance binder		
1105.	Document preparation		
1106.	Notary fees		
1107.	Attorney's fees to		
	includes above items no.:		
1108.	Title insurance to Advantage Title		502.50
	includes above items no.:		
1109.	Lender's coverage \$144,752.00 \$502.50		
1110.	Owner's coverage \$180,940.00		
1111.	Site Review to Advantage Title		25.00
1112.	Name Search to Advantage Title		25.00
1113.	Assessment Search to Advantage Title		30.00
1114.	ARM Endorsement to Advantage Title		50.00
1115.	Balloon Endorsement		
1200. Government Recording and Transfer Charges			
1201.	Recording fees: Deed \$20.00 Mortgage \$31.00		51.00
1202.	City/county tax/stamps: Mortgage \$332.93		332.93
1203.	State tax/stamps: Deed \$597.10		597.10
1204.	Conservation Fee to Carver County Treasurer		5.00
1205.	Recording Service Fee to Stewart Title of Minnesota		40.00
1206.	2004 Taxes full year paid to Carver County POCS 1532.00		
1300. Additional Settlement Charges			
1301.	Survey		
1302.	Pest inspection		
1303.	Payoff Processing Fee		
1304.	Courier Fee to Stewart Title of Minnesota		15.00
1305.	Real Estate Closing Fee		
1306.	Escrow for Completion/Repairs		
1307.	Escrow for Assessments		
1308.	Escrow Fee		
1309.	Levied Special Assessments		
1400.	Total settlement charges (entered on lines 103, section J and 502, section K)		3,836.94
			5,517.48

DISBURSEMENT REQUEST AND AUTHORIZATION

Principal	Loan Date	Maturity	Loan No	Cal/col	Account	Officer	Initials
\$35,740.00	05-05-2004	05-10-2019	9700256356			LWJ	
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

Borrower: Jonathon Estebo (SSN: 332-60-4899)
 Carrie Estebo (SSN: 475-11-5835)
 2071 Clover Ridge Drive
 Chaska, MN 55318

Lender: Inter Savings Bank, fsb
 Edina
 6545 France Ave. S., #130
 Edina, MN 55435
 (952) 920-6700

LOAN TYPE. This is a Variable Rate Disclosable Open-end Line of Credit Loan to 2 Individuals with a Credit Limit of \$35,740.00.

PRIMARY PURPOSE OF LOAN. The primary purpose of this loan is for (please initial):

- _____ Maintenance of Borrower's Primary Residence.
- _____ Personal, Family or Household Purposes or Personal Investment.
- _____ Agricultural Purposes.
- _____ Business Purposes.

SPECIFIC PURPOSE. The specific purpose of this loan is: HECL.

FLOOD INSURANCE. The property that will secure the loan is not located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards. Therefore, although flood insurance may be available for the property, no special flood hazard insurance is required by law for this loan.

DISBURSEMENT INSTRUCTIONS. I understand that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$35,740.00 as follows:

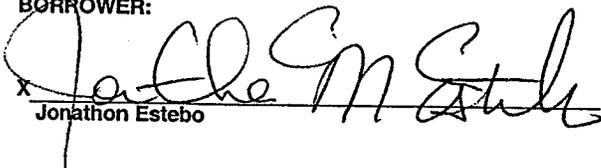
Amount paid to me directly:	\$35,568.80
\$35,568.80 Lender's Check # Check Writing Availability	
Other Charges Financed:	\$116.20
\$9.00 Watercrest Flood Cert	
\$20.00 Recording Fee	
\$82.20 MRT	
\$5.00 Conservation Fee	
Total Financed Prepaid Finance Charges:	\$55.00
\$50.00 Doc Prep Fee	
\$5.00 Watercrest Life of Loan	
Credit Limit:	\$35,740.00

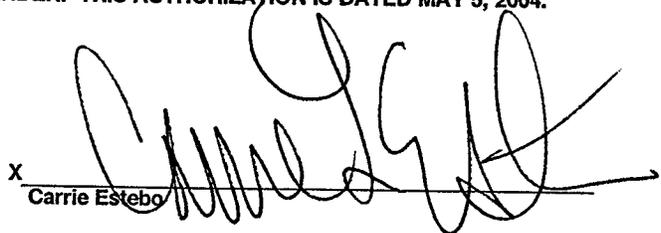
TAX CONSEQUENCES. I understand that Lender makes no representation or warranty whatsoever concerning the tax consequences of this loan, including the deductibility of interest, and that I should consult with my own tax advisor for guidance on this subject. I also agree that Lender shall not be liable in any manner whatsoever should the interest paid on the loan not be deductible.

NOTICE OF RIGHT TO DISCONTINUE ESCROW. If my mortgage loan involves an escrow account for taxes and homeowner's insurance, I may have the right in five years to discontinue the account and pay my own taxes and homeowner's insurance. IF I am eligible to discontinue the escrow account, I will be notified in five years.

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, I REPRESENT AND WARRANT TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN MY FINANCIAL CONDITION AS DISCLOSED IN MY MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED MAY 5, 2004.

BORROWER:

X 
 Jonathon Estebo

X 
 Carrie Estebo

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Jonathan M Estebo,

Debtor(s).

BKY 04-43963

Chapter 13 Case

**MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION
AND MOTION TO DISMISS OR CONVERT CASE**

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies on the representations made by the debtor in his Schedules.

LEGAL DISCUSSION

Section 1325(a)(4) of the Bankruptcy Code states the so-called "best interests of creditors" test. Under this section, a proposed Chapter 13 plan can only be confirmed if:

the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.

11 U.S.C. § 1325(a)(4).

The value of preferential transfers which are avoidable under 11 U.S.C. § 547 must be included in the "best interests of creditors" analysis. *In re Larson*, 245 B.R. 609 (Bankr. D. Minn. 2000). Here, the paper trail suggests that the debtor's mother loaned him \$40,000, the bulk of which he used as a down payment on a house he purchased with his wife. After closing on the sale of the house, the debtor took out a line of credit secured by the home and used the bulk of these funds to repay his mother some \$32,000. Nothing in the documents provided to the Trustee indicates that the debtor's mother took a mortgage or other security interest in the property purchased with the money she loaned; rather, this was clearly an unsecured loan. Nothing in the documents provided to the Trustee indicates that there was any underlying note or other agreement setting forth the terms of the repayment of the loan. Nothing in the documents provided to the Trustee suggests that the subsequent home equity line of credit was "earmarked" for payment of the loan from the debtor's mother; rather, the debtor apparently had full control and discretion over how the funds were to be disbursed. *In re Anderson*, 275 B.R. 264

(Bankr. W.D. Ky. 2002) (Earmarking doctrine not applicable where debtor had control over which creditor was to be paid from funds acquired from another creditor). In short, all of the elements of a preferential transfer appear to be made out: (1) a payment to or for the benefit of a creditor, (2) on account of an antecedent debt, (3) made while the debtor was insolvent², (4) made within 90 days prior to the filing of the bankruptcy petition, (5) that enables the creditor to receive more than she would have received on her unsecured claim in a Chapter 7 liquidation.

The value of the preference is at least \$16,000, yet the total payout to the debtor's unsecured nonpriority creditors is only approximately \$1,990 – and that over a period of three years. The Trustee contends that any payout over the length of the debtor's proposed plan that is less than the value of his nonexempt assets and avoidable transfers violates 11 U.S.C. § 1325(a)(4) and therefore confirmation must be denied.³

The Court has the power to dismiss or convert the debtor's case for "cause," and a nonexclusive list of grounds for dismissal is included in the statute, 11 U.S.C. § 1307(c). The Trustee argues that the conversion of the case is in the best interests of the debtor's creditors, so that a Chapter 7 trustee can be appointed to liquidate the preference claim.

CONCLUSION

For the reasons stated herein, the Trustee respectfully requests that confirmation of the debtor's proposed Chapter 13 plan be denied, and that this case be converted to a case under Chapter 7 of Title 11, United States Code.

Dated: September 29, 2004

Respectfully submitted:

/e/ Thomas E. Johnson

Thomas E. Johnson, ID # 52000
Margaret H. Culp, ID # 180609
Counsel for Chapter 13 Trustee
310 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402-1521
(612) 338-7591

² Insolvency is presumed during the 90 days immediately preceding the filing date. *11 U.S.C. § 547(f)*. The 90-day period extends back in time from July 16, 2004, which clearly covers the date the debtor made the \$32,000 payment to his mother (May 10, 2004).

³ A more detailed analysis of the "best interests of creditors" issue would involve a discussion of how to arrive at the net liquidation value of the debtor's estate in a Chapter 7 case (i.e., after payment of the Chapter 7 Trustee's fees and compensation and any other administrative expenses in the Chapter 7 case), and comparing this figure to the discounted value of the debtor's proposed stream of payments over the five years of his Plan. Unless the debtor challenges the issue, it is the Trustee's contention that the "best interests of creditors" test is only met if the total payout by the debtor to his unsecured creditors is equal to or greater than the value of his equity interest in his nonexempt assets.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Jonathan M Estebo,

Debtor(s).

BKY 04-43963

Chapter 13 Case

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Thomas E. Johnson, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 29, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Chapter 13 Plan, Memorandum of Facts and Law, and proposed Order Denying Confirmation of Chapter 13 Plan and Converting Case on the individual(s) listed below, in the manner described:

By e-mail:

United States Trustee
1015 United States Courthouse
300 South 4th Street
Minneapolis, MN 55415

By first class U.S. mail, postage prepaid:

Jonathan Estebo
2071 Clover Ridge Drive
Chaska, MN 55318

Gregory J. Wald, Esq.
Attorney at Law
3601 Minnesota Drive, Suite 800
Edina, MN 55435

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

Executed: September 29, 2004
Johnson

/e/ Thomas E.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Jonathan M Estebo,

Debtor(s).

BKY 04-43963

Chapter 13 Case

**ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN AND
CONVERTING CASE**

At Minneapolis, MN, _____, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to confirmation of the debtor's proposed modified Chapter 13 plan and motion to dismiss or convert the case.

Appearances were noted in the minutes.

Upon the foregoing objection, arguments of counsel, and all of the files, records and proceedings herein:

IT IS ORDERED:

1. Confirmation of the debtor's Chapter 13 plan is DENIED.
2. This case is CONVERTED TO A CASE UNDER CHAPTER 7 OF TITLE 11, UNITED STATES CODE.

Nancy C. Dreher
United States Bankruptcy Judge