

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-44883-NCD

Chapter 13

Randolf L. Gardner,

**OBJECTION TO CONFIRMATION**

Debtor(s).

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

1. Principal Residential Mortgage, Inc., and Mortgage Electronic Registration Systems, Inc., (“Principal”) 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 Rules 3015 and 9014 of the Federal Rules of Bankruptcy Procedure. Local Rules 3015-3, 3020-1, 9013-2, and 9013-3, and Principal requests this Court to enter an order denying confirmation of Debtor’s proposed Chapter 13 plan (the “Plan”).

3. Hearing on Confirmation of the Plan is scheduled for 10:30 a.m. on November 4, 2004, before the Honorable Nancy C. Dreher in Courtroom 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel can be heard.

4. Any objection to the relief requested herein must be filed and delivered not later than November 1, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 26, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A

WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

5. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334(a) and 157(a), Fed.R.Bankr.P. 5005, 11 U.S.C. § 1325 and applicable rules. This is a core proceeding. The petition commencing this Chapter 13 case was filed on September 1, 2004. This case is now pending in this court.

6. By mortgage dated July 31, 2002, in the original principal amount of \$219,600.00 (the “Mortgage”), Principal acquired a mortgagee’s interest in the real property (the “Property”)

Lot 16, Block 1, Amber Woods, Hennepin County, Minnesota

Address: 18435 – 33<sup>rd</sup> Avenue North, Plymouth, Minnesota 55447

7. A copy of the Mortgage is attached hereto as Exhibit A.

8. The pre-petition arrearages owed to Principal total \$7,111.05. The outstanding balance under the Note is \$215,935.05 plus interest, late fees and attorneys’ fees and costs. The interest rate on the Note is 7.875%.

9. The total arrearages are \$7,111.05 and not \$6,231.00 as stated in the Plan

10. Furthermore, under the proposed monthly payments, Principal will not be paid on the arrearages – assuming the Trustee paid Principal in successive installments – for over 19 months.

11. Because of the proposed cure period, the Plan does not comply with this jurisdiction’s interpretation of the applicable provisions of Chapter 13.

12. Movant has not received any payments under the Plan.

13. Movant has incurred \$300.00 in costs and attorneys’ fees in connection with this objection that must be included in the secured claim pursuant to 11 U.S.C. § 506.

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

WHEREFORE, Principal respectfully requests this Court to enter an order denying confirmation of the Debtor(s) proposed plan and such other further relief as is just and equitable.

Dated: September 29, 2004

MACKALL, CROUNSE & MOORE, PLC

By/e/Andrew P. Moratzka

Andrew P. Moratzka (#0322131)

Attorneys for Movant

1400 AT&T Tower

Minneapolis, MN 55402

Ph. (612) 305-1400



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-44883-NCD

Chapter 13

Randolf L. Gardner,

Debtor(s).

**MEMORANDUM IN SUPPORT OF  
OBJECTION TO CONFIRMATION**

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Principal Residential Mortgage, Inc., and Mortgage Electronic Registration Systems, Inc., (“Principal”) submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

The pre-petition arrearages owed to Principal total \$7,111.05. The outstanding balance under the Note is \$215,935.05 plus interest, late fees and attorneys’ fees and costs. The interest rate on the Note is 7.875%.

The total arrearages are \$7,111.05 and not \$6,231.00 as stated in the Plan.

Furthermore, under the proposed monthly payments, Principal will not be paid on the arrearages – assuming the Trustee paid Principal in successive installments – for over 19 months.

DISCUSSION

Pursuant to 11 U.S.C. §1322, a plan must provide to cure existing delinquencies under a homestead mortgage within a reasonable time. In Minnesota, 12 months has been established as the presumed maximum reasonable period to cure homestead mortgage delinquencies. *In re Newton*, 161 B.R. 207 (Bankr. D. Minn. 1993); *see also In re Brady*, 86 B.R. 166 (Bankr. Minn. 1988). Here, Debtor does not list arrearages owed to Principal. Therefore, the delinquencies will not be cured and the plan should not be confirmed.

WHEREFORE, Principal respectfully requests this Court to deny confirmation of Debtor's proposed Chapter 13 Plan.

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

MACKALL, CROUNSE & MOORE, PLC

By/e/Andrew P. Moratzka  
Andrew P. Moratzka (#0322131)  
Attorneys for Movant  
1400 AT&T Tower  
Minneapolis, MN 55402  
Ph. (612) 305-1400

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Randolf L. Gardner

Debtor.

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Bky. No. 04-44883-NCD

Amy J. Ditty, employed by Mackall, Crouse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Objection to Confirmation, Memorandum in Support of Objection to Confirmation and proposed Order** 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:

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

(Debtor(s))  
Randolf L. Gardner  
18435 – 33<sup>rd</sup> Avenue North  
Plymouth, MN 55447

Kelly S. Gardner  
18435 – 33<sup>rd</sup> Avenue North  
Plymouth, MN 55447

(Trustee)  
Jasmine Keller  
310 Plymouth Building  
12 South Sixth Street  
Minneapolis, MN 55402

(Attorney for Debtor(s))  
Robert Hoglund  
P O Box 130938  
Doraville, MN 55112

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

Dated: August 13, 2004

Signed: /e/Amy J. Ditty

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-44883-NCD

Chapter 13

Randolf L. Gardner

Debtor(s).

**ORDER**

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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: \_\_\_\_\_

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

**Law Offices**  
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901 Marquette Avenue  
Minneapolis, MN 55402-2859  
Telephone: (612) 305-1400  
Facsimile: (612) 305-1414



www.mcmlaw.com

**Lorraine D. Jacobson**  
Paralegal  
(612) 305-1502  
ldj@mcmlaw.com

September \_\_, 2004

TO: Parties on the attached list

**Re:       Randolph L. Gardner**  
**Bankruptcy No. 04-44883-NCD**

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

- (i)       Objection to Confirmation of Principal Residential Mortgage, Inc.;
- (ii)      Memorandum in Support of Objection to Confirmation;
- (iii)     Proposed Order; and
- (iv)     Declaration for Proof of Service.

Very truly yours,

MACKALL, CROUNSE & MOORE, PLC

By

Lorraine D. Jacobson

Enclosures

CC:   Principal Residential (Via Lenstar)

**SERVICE LIST**

Re: Randolph L. Gardner  
Bankruptcy No. 04-44883-NCD

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

(Debtor(s))  
Randolf L. Gardner  
18435 – 33<sup>rd</sup> Avenue North  
Plymouth, MN 55447

Kelly S. Gardner  
18435 – 33<sup>rd</sup> Avenue North  
Plymouth, MN 55447

(Trustee)  
Jasmine Keller  
310 Plymouth Building  
12 South Sixth Street  
Minneapolis, MN 55402  
(Attorney for Debtor(s))  
Robert Høglund  
P O Box 130938  
Roseville, MN 55113