UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Paul Giel
Mary Giel

Debtors

Chapter 13
Case No. 04-45307

OBJECTION TO CONFIRMATION OF PLAN

Secured creditor Ohio Savings Bank hereby objects to the confirmation of the plan proposed by Debtors above-named on the basis that:

The Debtors' plan does not provide periodic payment of pre or post petition payments to Movant. Instead, the debtors' plan proposes to pay off both mortgage liens upon sale of the property within a nine month period, contrary to 11 U.S.C. Section 1322(a)(2), 11 U.S.C Section 1322(b)(2), 11 U.S.C. Section 1322(c) and 11 U.S.C. Section 1325(a), (a)(3) and (a) (6).

Dated: October 29, 2004

USSET & WEINGARDEN P.L.L.P

By:/E/ Paul A. Weingarden/Brian H. Liebo

Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Paul Giel
Mary Giel

Debtors

Chapter 13
Case No. 04-45307

NOTICE OF HEARING AND MOTION TO OBJECT TO CONFIRMATION OF PLAN AND DISMISSAL OF CHAPTER 13 CASE

TO: Paul Giel and Mary Giel, and other entities specified in Local Rule 1204(a).

A. Ohio Savings Bank, ("Movant"), a corporation organized and existing under the laws of the State of Ohio, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

B. The objection to confirmation of the plan will be heard at the confirmation hearing on the Debtors Chapter 13 Plan scheduled at 10:30 am on November 18, 2004, in Courtroom 8 West, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard.

C. Any response to this motion must be filed and delivered not later than 10:30 am on November 17, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than November 15, 2004, which is three days before the time set for the hearing. If there is no response to this Motion within the time provided by law, the matter may be heard as a default by the Court.

D. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 201. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on September 21, 2004. The case is now pending in this court.

E. This motion arises under 11 U.S.C. §1307(c)(5), and 11 U.S.C. §1324 and Federal Rules of Bankruptcy Procedure 1017(d), 3015(f), 9014 and Local Rules 1201-1215. Movant requests denial of confirmation of Debtors Chapter 13 Plan and dismissal of the Chapter 13 case.

F. Movant has a perfected first mortgage interest in the Debtors homestead as shown on Exhibit A and objects to confirmation of the plan proposed by the Debtors above-named on the basis that:

1. The plan does not provide for the cure of the mortgage arrearages within a reasonable period of time.

a. At the time that the present bankruptcy was filed, Debtors were delinquent on their mortgage payments to Movant from June, 2004 through September, 2004 for a total amount due of $12,079.00 together with late charges, other applicable fees pursuant to the terms of the mortgage, and , attorney's fees and costs incurred in the foreclosure proceeding for a total delinquency of $13,910.69.

b. The existing total debt of the first mortgage interest to Movant is in excess of $420,834.63. The property is also encumbered by a second mortgage in the amount of $100,000.00. According to Hennepin County tax records, the property is valued at $589,000.00.

c. Debtors propose, in their plan, to pay $250.00 per month to the Trustee. Debtors further propose in their plan to cure the pre-petition arrears as well as the impending post-petition arrears, (due to proposed payment of only half the required mortgage payment), with the proceeds of a furture sale, which sale date has yet to be determined. This proposal for the payment of Debtors' pre-petition arrearages to Movant is unreasonable pursuant to 11 U.S.C. Section 1322(b)(5), and 11 U.S.C. Section 1325(a)(1) and (a)(3). See In

Re Newton, 161 Bky Rptr. 207 (D. Minn. 1993), In Re Hogue 78 B.R. 8 67 (Bky S.D. Ohio 1987), and In Re Gavia 24 B.R. 216 (Bankr. E.D. Cal. 1982).

WHEREFORE, Ohio Savings Bank by its undersigned attorney, moves the Court for an Order denying confirmation of the Debtors' plan and dismissal of the Chapter 13 case.

Dated: October 29, 2004.

USSET & WEINGARDEN P.L.L.P

By:/E/ Paul A. Weingarden/Brian H. Liebo

Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Paul Giel Jr.
Mary Giel

Debtors

Chapter 13
Case No. 04-45307

AFFIDAVIT OF PETITIONER

STATE OF OHIO)

COUNTY OF CUYAHOGA)

Michael Headen, being first duly sworn, deposes and states on oath that she\he is employed by Ohio Savings Bank, the movant in this action, that she\he has read the annexed Notice of Hearing and Motion to Object to Confirmation of Plan and Dismissal of Chapter 13 Case, and that it is true of her\his knowledge to the best of her\his information.

Michael Headen, Assistent Vice President

Subscribed and sworn to before me this
26th day of October 2004.

Joanne Flors
Notary Public

JOANNE FLORS
Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires Apr. 13, 2008

3263133

OFFICE OF THE REGISTRAR OF TITLES
HENNEPIN COUNTY, MINNESOTA
CERTIFIED FILED ON
MAR 13 2000
REGISTRAR OF TITLES
BY ____ DEPUTY

3263133

Loan No.: 5425717

[Space Above This Line For Recording Data]

BOX 490

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **FEBRUARY 17, 2000**. The mortgagor is **Paul R. Giel Jr. AND Mary E. Giel, Husband and Wife**

whose address is **18865 Northome Boulevard Deephaven, Mn 55391** ("Borrower"). This Security Instrument is given to **Mortgage Source, Inc.**

which is organized and existing under the laws of **THE STATE OF Minnesota**, and whose address is **13911 Ridgedale Drive Minnetonka, Mn 55305** ("Lender"). Borrower owes Lender the principal sum of **FOUR HUNDRED TWENTY-SEVEN THOUSAND AND 00/100** Dollars (U.S. $ **427,000.00**). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **MARCH 1, 2030**. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in **Hennepin** County, Minnesota:

Parcel 1: Lot 241, the above described lot being in Deephaven Park and that part of the adjoining vacated East-West alley lying South of the center line of said alley and between the extensions across it of the West line of said Lot 241 and the center line of the North-South alley. That part of the adjoining vacated North-South alley lying West of the center line of said alley and between the extensions across it of the North and South lines of said Lot 241.

Parcel 2: Lot 3, Auditor's Subdivision No. 108, Hennepin County, Minnesota.

Henn Co MRT
RSA#35906
03/06/2000
Paid $1,024.80

TITLE ONE, INC.
9201 East Bloomington Freeway
Suite FF
Bloomington, MN 55420
T21132

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Paul Giel
Mary Giel

Debtors

Chapter 13
Case No. 04-45307

MEMORANDUM OF LAW

FACTS

The facts in this matter are as detailed in Movant's Motion which are incorporated herein by reference. Ohio Savings Bank ("Movant") is a secured creditor of the Debtors and holds a perfected first mortgage on the Debtors' residence. Movant submits this Memorandum of Law in Support of its Motion to Object to Confirmation of Plan and Dismissal of the Chapter 13 Case.

ARGUMENT

Movant asserts that the Plan as proposed does not provide for cure within a reasonable period of time contrary to 11 U.S.C. §1322(b)(5) and cannot be confirmed pursuant to 11 U.S.C. §1325(a)(1), 1325(a)(3). In re: Newton, 167 BR. 207 (Bky D. MN 1993); In re: Brady, 86 BR. 166 (Bky D. MN 1988).

Debtors plan does not provide for payment of pre petition payments, but for payoff of the loan when and if the property is sold. Pursuant to In Re Newton the "Bankruptcy Court cannot confirm a plan that proposes to cure pre-petition arrears out of the proceeds of a post-petition sale of the property, where the debtor is unable to produce more than remote speculation as to the terms of date of sale". See also In Re Hogue 78 B.R. 867 (Bky S.D. Ohio 1987). Further, Debtors plan states that post-petition payments will be in the amount of $1,900.00 per month while the monthly payment is currently at $3,019.75. Movant is not being provided any assurance of this sale and will receive no pre-petition payment and only half the

post-payment amount while the insurance and taxes continue to rise. Pursuant to the Newton decision "…confirmation must be denied where the debtor proposes to cure [pre-petition arrears] solely from the proceeds of sale when, as, and if it is closed, without proposing to maintain *all* post-petition mortgage payments as they mature in the ordinary course…"(emphasis added).

At the confirmation hearing Movant believes the Court will deny confirmation of the Debtors' Plan. Pursuant to 11 U.S.C. §1307(c)(5) on request of a party in interest and after notice and a hearing, the court may dismiss the case for denial of confirmation under §1325. In the present case, Movant asserts that cause for dismissal exists based upon the Debtors' inability to present a confirmable plan to the Court.

WHEREFORE, Movant respectfully requests this Court to deny confirmation of the Plan and dismiss the Chapter 13 Case, and such other and further relief as may be just and equitable in the premises.

Dated: October 29, 2004

USSET & WEINGARDEN P.L.L.P

By:/E/ Paul A. Weingarden/Brian H. Liebo

Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Paul Giel
Mary Giel

Debtors

Chapter 13
Case No. 04-45307

UNSWORN DECLARATION FOR PROOF OF SERVICE

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on October 29, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to 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:

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

Jasmine Z. Keller
Chapter 13 Trustee
310 Plymouth Building, 12 South 6th Street
Minneapolis, MN 55402

Wayne G. Nelson
Attorney at Law
5500 Wayzata Blvd Suite 1025
Minneapolis, MN 55416

Paul Giel
Mary Giel
18865 Northome Boulevard
Deephaven, MN 55391

/E/Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Paul Giel
Mary Giel

Chapter 13
Case No. 04-45307

Debtors.

ORDER

The above entitled matter came on for hearing upon motion of Ohio Savings Bank pursuant to 11 U.S.C. Section 1307 on November 18, 2004, at the U.S. Bankruptcy Court, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that:

1. Confirmation of the Debtors' Chapter 13 Plan is hereby denied.

2. The Chapter 13 Case herein is hereby dismissed.

Dated this __ day of _____, 2004.

_____
Honorable Robert J. Kressel
Judge of the Bankruptcy Court