

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Daniel S. Miller

BKY 04-60106

Debtor.

Chapter 11

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—  
OBJECTION OF THE UNITED STATES TRUSTEE  
TO THE DEBTOR'S MODIFIED CHAPTER 11  
PLAN OF REORGANIZATION DATED AUGUST 4, 2004  
—

COMES NOW the United States Trustee by and through the undersigned attorney and objects to the debtor's Modified Chapter 11 Plan of Reorganization dated August 14, 2004 (Plan). In support of his objection, he states the following:

1. A hearing has been scheduled in this matter on September 29, 2004 at 10:00 a.m. in Courtroom No. 2, 118 S Mill, Fergus Falls, Minnesota, before the Honorable Dennis D. O'Brien, United States Bankruptcy Judge for the District of Minnesota.

2. This objection arises under 11 U.S.C. § 1129 and FED. R. BANKR. P. 3020. The United States Trustee has standing to file this objection pursuant to 11 U.S.C. § 307. This objection is filed under Fed. R. Bankruptcy P. 9014 and Local Rule 3020-1, 9013-2 and 9013-3.

3. The Plan fails to comply with 11 U.S.C. § 1129 (a)(12) in that the debtor has failed to pay all fees due and payable under section 1930 of title 28 during the pendency of this chapter 11 proceeding. Specifically, the debtor has failed to pay quarterly fees for the First and Second quarters of 2004, in the aggregate amount of \$1000.00. It is unclear if the debtor has the funds

available to pay all administrative expenses, in full on the effective date, as defined in the Plan.

5. Due to the failure of the debtor to file tax returns for the years 1999, 2000, 2001, 2002 and 2003, the United States Trustee is unable to determine if the plan complies with 11 U.S.C. § 1129(a)(11).

WHEREFORE, the United States Trustee requests that the Bankruptcy Court not confirm the Plan and grant such other relief as it deems appropriate.

Dated: September 21, 2004

Habbo G. Fokkena  
United States Trustee  
Region 12

By: /s/ Robert B. Raschke  
Robert B. Raschke  
Assistant U.S. Trustee, 161081  
Office of the U.S. Trustee  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415  
TELE: (612) 664-5500

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Daniel S. Miller

BKY 04-60106

Debtor.

Chapter 11

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—  
UNITED STATES TRUSTEE'S  
MEMORANDUM OF LAW IN SUPPORT OF  
OBJECTION TO THE DEBTOR'S MODIFIED CHAPTER 11  
PLAN OF REORGANIZATION DATED AUGUST 4, 2004

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The debtor, as proponent of the proposed plan, bears the burden of establishing that the proposed plan satisfies all statutory requirements for confirmation. *In re Martin*, 113 B.R. 949, 961 (Bankr. N.D. Ill. 1990); *In re Lakeside Global II, Ltd.*, 116 B.R. 499, 505 (Bankr. S.D. Tex. 1989). The standards for confirmation are located at 11 U.S.C. § 1129. The portions of that section relevant to the United States Trustee objection state the following:

The court shall confirm a plan only if all of the following requirements are met:

...

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

...

11 U.S.C. § 1129(a).

Since this case has been pending, the debtor has failed to pay quarterly fees for the First and Second quarters of 2004, in the aggregate amount of \$1000.00. It is unclear if the debtor has or will have the funds available to pay all administrative expenses, in full on the effective date, as defined in the Plan.

Due to the debtors failure to file tax returns for the years 1999, 2000, 2001, 2002 and 2003, the amount of tax liability cannot be determined. As a result, the United States Trustee cannot determine if the plan complies with 11 U.S.C. § 1129(a)(11).

Accordingly, confirmation of debtor's Modified Chapter 11 Plan of Reorganization dated August 14, 2004, should be denied.

Dated: September 21, 2004

Habbo G. Fokkena  
United States Trustee  
Region 12

By: /s/ Robert B. Raschke  
Robert B. Raschke  
Assistant U.S. Trustee, 161081  
Office of the U.S. Trustee  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415  
TELE: (612) 664-5500

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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—  
In re:

Daniel S. Miller

BKY 04-60106

Debtor.

Chapter 11

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—  
ORDER DENYING APPROVAL OF TO THE DEBTOR'S MODIFIED CHAPTER 11  
PLAN OF REORGANIZATION DATED AUGUST 4, 2004

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—  
At Fergus Falls, Minnesota, the \_\_\_\_\_ day of \_\_\_\_\_, 2004:

This matter came before the Court for hearing on the approval of the debtor's Modified Chapter 11 Plan of Reorganization Dated August 4, 2004. Appearance were noted on the record.

Based upon a review of the disclosure statement and the files and pleadings in this case, the arguments of counsel, and the findings of fact on the record,

IT IS HEREBY ORDERED:

That approval of debtor's Modified Chapter 11 Plan of Reorganization Dated August 4, 2004 is hereby denied.

\_\_\_\_\_  
The Honorable Dennis D. O'Brien  
United States Bankruptcy Court

CERTIFICATE OF SERVICE

In Re: )  
 )  
Daniel Miller ) Bankruptcy No. 04-60106  
 )  
Debtor(s). ) Chapter 11 Case  
 )  
 )  
 )

I, Nancy Poole, declare under penalty of perjury that on September 21, 2004, I served a copy of the foregoing US Trustee's Objection to the debtor's Modified Chapter 11 Plan of Reorganization dated August 14, 2004 by U.S. mail, postage prepaid, to each person named below:

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Kaler Law Office  
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Fargo, ND 58107

Dated: 09/21/2004

By: Nancy J. Zerk  
Office of the United States Trustee