

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

ALLEN F. BOIT
JEWEL A. MARKS-BOIT

Bky Case No 04-60443 DDO
Chapter 13

Debtor(s)

OBJECTION TO CONFIRMATION OF PLAN

TO: All parties in interest under Local Rule 9013-3.

1. I, Michael J. Farrell, am the standing trustee assigned to the above-mentioned case.
2. A confirmation hearing has been set for 10:00 a.m. on September 28, 2004 in Courtroom 2 – 2nd Floor, 118 South Mill Street, Fergus Falls, Minnesota, 56537.
3. Any response to this motion must be filed and delivered not later than 10:00 a.m. on September 23, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 17, 2004, which is seven days prior to the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. The Court has jurisdiction pursuant to 28 U.S.C. § § 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on April 14, 2004. This 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 debtors' proposed Chapter 13 Plan filed on April 27, 2004 (the "Plan").
6. The Debtors schedules show, and the Debtors testified at the 341 meeting, that they generally receive an annual income tax refund. This would be considered disposable income. However, the Debtor's income tax refund is not included in the Plan.
7. Trustee objects to the confirmation of the plan on the basis that Debtor's plan does not include a provision that all of Debtor's disposable income during the first three years of the plan will be paid to the Plan to the benefit of the unsecured creditors.

Therefore, the trustee requests that the proposed plan be denied and any other action the court deems fit.

Dated September 20, 2004

/s/ Michael J. Farrell

Michael J. Farrell, Trustee

Box 519

Barnesville, MN 56514

(218) 354-7356

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

ALLEN F. BOIT
JEWEL A. MARKS-BOIT

Bky Case No 04-60443 DDO
Chapter 13

Debtor(s).

The undersigned, being an employee of the standing Chapter 13 Trustee, declares that on the date indicated below, I served the following:

Notice of Trustee's Objection to Confirmation of Plan
and Unsworn Declaration of Proof of Service

Upon each of the entities named below, by mail (unless otherwise indicated 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 Barnesville, Minnesota, addressed to each of them as follows:

Debtor(s):

ALLEN F. BOIT
JEWEL A. MARKS-BOIT
1482 STATE HWY. 200
MAHNOMEN, MN 56557

Debtor's Attorney:

KEVIN T. DUFFY
DUFFY LAW OFFICE
PO BOX 715
THIEF RIVER FALLS, MN 56701

Additional Copy(s) addressed to:

DAVID L. JOHNSON
MCNAIR, LARSON & CARLSON, LTD.
51 BROADWAY, SUITE 600
PO BOX 2189
FARGO, ND 58108

UNITED STATES TRUSTEE
1015 U.S. COURTHOUSE
300 W. 4TH ST.
MINNEAPOLIS, MN 55415

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

Dated: September 20, 2004

/s/ Belinda D. Kurtz
Belinda D. Kurtz
Chapter 13 Office

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

ALLEN F. BOIT
JEWEL A. MARKS-BOIT

Bky Case No 04-60443 DDO
Chapter 13

Debtor(s)

This matter came before the Court on September 28, 2004 at 10:00 a.m., or as soon thereafter as could be heard on Confirmation of Debtor's Chapter 13 Plan. The appearances are as noted on the record. The court made its findings and conclusion on the record. Based on the Local and Federal Rules of Bankruptcy Procedure, it is

HEREBY ORDERED:

Confirmation of Debtor's Chapter 13 Plan is DENIED.

Dated: _____

Dennis D. O'Brien
U.S. Bankruptcy Judge