

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE:

ALLEN BOIT AND  
JEWEL MARKS-BOIT,

BANKRUPTCY NO. 04-60443  
CHAPTER 13 CASE

DEBTORS.

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**OBJECTION TO CONFIRMATION OF PLAN**

TO: ALL PARTIES IN INTEREST UNDER LOCAL RULE 9013-3.

1. Fred Zavitz and Casey and Deborah Brantner are creditors and interested parties in the above-mentioned case.
2. A confirmation hearing has been set for 10:00 a.m. on September 28, 2004, in Courtroom 2 - 2<sup>nd</sup> Floor, 118 South Mill Street, Fergus Falls, Minnesota 56537.
3. 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 was filed on April 14, 2004. This case is now pending in this Court.
4. 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, 9006-01, 9013-1 through 9013-5, and such other Local Rules as may apply. Movant requests relief with respect denial of confirmation of the debtors' proposed chapter 13 Plan filed on April 27, 2004, and amended chapter 13 plan filed on September 22, 2004 (the "Plan").

5. The Plan does not provide for payment or other treatment of the secured claim of Wells Fargo Bank which, upon information and belief, may be co-signed by Mr. and Ms. Brantner.
6. The Plan fails to provide for payment or other treatment of an executory contract between the debtors and Mr. and Mrs. Brantner with respect to the Brantner's acquiring an ownership interest in the Debtor's sales barn and real estate located in Mahnommen, Minnesota.
7. The Plan fails to address payment or other treatment regarding corral panels, gates, and posts owned by Fred Zavitz.
8. The debtors have failed to obtain bankruptcy court approval regarding post-petition transactions with one of their children respecting the sale of their business and the lease of real property located in Mahnommen, Minnesota.
9. The debtors propose to pay the chapter 13 trustee **only** \$135.00 per month for **only** 36 months for a total of \$4,860.00. After deducting trustee fees, unsecured creditors, as a class, would receive a pro-rata distribution of \$4,374.00. Based on schedules filed by Boit, unsecured creditor claims total **\$130,279.72**. This would amount to a dividend to unsecured creditors equal to \$0.0336%. Although there is no substantial repayment requirement, the term and percentage payment to unsecured creditors under a debtor's proposed plan are factors that court may consider in accessing the debtor's "good faith" in proposing a plan. In re Villanueva, 274 B.R. 836 (9<sup>th</sup> Cir. BAP (Cal. 2002)). A proposed payment of only 1% on unsecured debt, in a debtor's 36-month plan, evidences a lack of "good faith", of the kind, precluding

confirmation of the debtors' plan. In re Hinton, 231 B.R. 384 (Bkrtey. S.D. Fla. 1999).

10. For the foregoing reasons, the Plan should be denied confirmation.
11. Fred Zavitz and Casey and Deborah Brantner request an evidentiary hearing in connection with this matter.
12. Fred Zavitz and Casey and Deborah Brantner may appear and testify. In addition, the debtors may be called as adverse witnesses.
13. It is anticipated that exhibits would consist of the Plan, Petition, Schedules, and Statements as well as other documents consisting of cash flow projections, unsigned lease and bill of sale, a loan commitment made to Angie Holland (Boit's daughter) by MMCDC, contracts, invoices, and loan papers.

**WHEREFORE**, Fred Zavitz and Casey and Deborah Brantner request that the proposed Plan be denied and such other action as the Court deems fit.

Dated this 24<sup>th</sup> day of September, 2004.

McNAIR, LARSON & CARLSON, LTD.

By: 

DAVID L. JOHNSON, ID #3484

51 Broadway, Suite 600

Post Office Box 2189

Fargo, North Dakota 58108

(701) 293-9190

Attorneys for Fred Zavitz and Casey and

Deborah Brantner

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE:

ALLEN BOIT AND  
JEWEL MARKS-BOIT,

BANKRUPTCY NO. 04-6043  
CHAPTER 13 CASE

DEBTORS.

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**ORDER**

This matter came before the Court on September 28, 2004, at 10:00 a.m., or as soon thereafter a could be heard on Confirmation of Debtor's Chapter 13 Plan. The appearances are 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 the Debtor's Chapter 13 Plan is DENIED.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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DENNIS D. O'BRIEN  
U.S. Bankruptcy Judge

**AFFIDAVIT OF SERVICE BY MAILING**

STATE OF NORTH DAKOTA

RE: Allen Boit and Jewel Marks-Boit

SS:

Bankruptcy No. 04-60443 - Chapter 13 Case

COUNTY OF CASS

Dorene K. Culp, being first duly sworn on oath deposes and says that she is a secretary in the office of McNair, Larson & Carlson, Ltd., Attorneys at Law, Post Office Box 2189, 51 Broadway, Dakota Center, Fargo, North Dakota; that on the 21<sup>st</sup> day of September 2004, she served:

**OBJECTION TO CONFIRMATION OF PLAN**

**PROPOSED ORDER**

on the following persons by placing a copy thereof in an envelope addressed to them as follows:

Allen and Jewel Boit  
1482 State Hwy 200  
Mahnomen, MN 56557

Michael J. Farrell  
Bankruptcy Trustee  
P. O. Box 519  
Barnesville, MN 56514

**VIA FACSIMILE AND U.S. MAIL**

**(218) 681-8525**

Kevin T. Duffy  
Attorney at Law  
P. O. Box 715  
Thief River Falls, MN 56701

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

which address is the last address of said attorneys known to her, and the envelope with postage prepaid was deposited by her in the United States Mail at Fargo, North Dakota, for delivery by the United States Post Office Department as directed by said envelope.

*Dorene K. Culp*

DORENE K. CULP

Subscribed and sworn to before me this 21<sup>st</sup> day of September, 2004.

*[Signature]*  
\_\_\_\_\_  
DAVID L. JOHNSON, Notary Public  
Cass County, North Dakota  
My Commission Expires: 03/13/2009

