

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

Bankruptcy No. 04-60924
Chapter 13

RECEIVED
SEP 20 10:13
U.S. BANKRUPTCY COURT
MINNAPOLIS, MN

In re:

David W. Fischer and
Sharon J. Fischer,

Debtors.

**NOTICE OF HEARING AND MOTION
OBJECTING TO CONFIRMATION OF CHAPTER 13 PLAN
AND DISMISSING CHAPTER 13**

- To: Debtors above-named and their attorney, Robert J. Hoglund, P.O. Box 1309, Roseville, MN 55113, Chapter 13 Trustee, and all other parties in interest.
1. Citizens National Bank of Park Rapids, Creditor of the Debtors herein, by and through its undersigned attorney, hereby moves this Court for an Order denying confirmation of the Debtors' Chapter 13 Plan and dismissing the Chapter 13 proceeding.
 2. This Court will hold a hearing on the Debtors' Plan on September 28, 2004 at 10:00 a.m. in Courtroom No. 2, U.S. Bankruptcy Court, 205 PO Building Courtroom 2, 118 South Mill Street, Fergus Falls, MN 56537 or as soon thereafter as counsel may be heard. The hearing on this Motion is set for the same date and time as the Debtors' hearing on Plan Confirmation.
 3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334; 11 U.S.C. §§ 1324 and 1325; Bankruptcy Rules 3015, 9013 and 9014; and Local Bankruptcy Rules 1070-1, 3015-3 and 3020-1. This is a core proceeding. The Petition commencing this case was filed on August 6, 2004. The case is now pending before this Court.
 4. Pursuant to Local Rule 9013-2(C), Creditor hereby gives notice that if testimony is required, Creditor reserves the right to call the following individuals to testify: (i) the Debtors; (ii) Cheryl Macklanburg or other designated representative of Citizens National Bank of Park Rapids; and (iii) any rebuttal witnesses the Creditor deems necessary. Evidentiary material shall include all the Debtors' filings with the Court, the Notes, Mortgages, and loan records, and all other files, records, and matters that may be relevant to the Motion set forth herein.
 5. Debtors executed a Note and Mortgage to Citizens National Bank of Park Rapids in the original principal sum of \$103,598.55 (sometimes referred herein as the first Mortgage). The Mortgage was filed of record in the office of the Wadena County Recorder on February 13, 2001 as Document Number 193783. As of August 11, 2004, the balance on the Mortgage

is \$82,379.15 and the past due payments total \$8,423.10, including late charges of \$415.10. The monthly payments on said Note are in the amount of \$878.00 due on the 5th of each month.

6. Debtors executed a Note and Mortgage to Citizens National Bank of Park Rapids in the original principal sum of \$17,429.16 (sometimes referred to herein as the second Mortgage). The Mortgage was filed of record in the office of the Wadena County Recorder on July 8, 2002 as Document Number 199113. As of August 11, 2004, the balance on the Mortgage is \$5,042.06 and the past due payments total \$1,100.00 including late charges of \$100.00. The monthly payments on said Note are in the amount of \$200.00 due on the 26th of each month.
7. Debtors Chapter 13 Plan erroneously designates the amount of the default on said Mortgages as \$3,568.00 and \$600.00 respectively. The Plan proposes to pay the deficiencies on the first Mortgage by monthly payments of \$231.00 beginning in month number six with sixteen payments. The Plan proposes to pay the amount of default on the second Mortgage in monthly payments of \$231.00 beginning in month 22 for three payments.
8. The Mortgages of Creditor encumber the Debtors' principal residence. 11 U.S.C. §1322(b)(5) requires "...curing of any default within a reasonable time and maintenance of payments while the case is pending..." The proposed Plan fails to cure the actual defaults within a reasonable time as required by law.
9. Debtors have failed to make the September 5, 2004 Mortgage payment on the first Mortgage and the August 26, 2004 payment on the second Mortgage, both of which occurred after filing of this bankruptcy proceeding.
10. The Debtors Plan should not be confirmed and the bankruptcy proceeding should be dismissed.
11. If no response opposing the Motion is timely filed, that an Order be entered granting the matter without a hearing.

Based on the foregoing, the Creditor respectfully requests that the Court deny confirmation of the Debtors' Plan and dismisses this proceeding.

Dated this 14th day of September, 2004.



James B. Wallace, #113931
Attorney for Citizens National Bank
201 East First Street
P.O. Box 27
Park Rapids, MN 56470
(218) 732-7279

VERIFICATION

STATE OF MINNESOTA)
) ss.
COUNTY OF HUBBARD)

Cheryl Macklanburg, being first duly sworn, deposes and says that she is the Collection Officer of Citizens National Bank of Park Rapids, that she has reviewed the allegations of the foregoing Notice of Hearing and Motion Objection to Confirmation of Plan, and that the same are true of her knowledge, except as to matters stated on information and belief, and as to those matters, she believes them to be true.

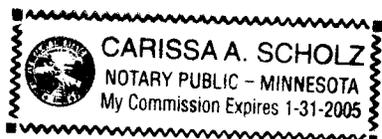


Cheryl Macklanburg

Subscribed and sworn to before me
this 14th day of September, 2004.



Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

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2004 SEP 20 AM 10:13
U.S. BANKRUPTCY COURT
FEBIGUS BUILDING

Bankruptcy No. 04-60924
Chapter 13

In re:

David W. Fischer and
Sharon J. Fischer,

**UNSWORN DECLARATION
FOR PROOF OF SERVICES**

Debtors.

Carissa A. Scholz, employed by Wallace & Tiffany Law Office, attorneys licensed to practice in this Court, with office address of 201 East First Street, P.O. Box 27, Park Rapids, MN 56470, declares that on September 16, 2004, I served the annexed **NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF CHAPTER 13 PLAN AND DISMISSING CHAPTER 13** upon each of the entities named below by depositing a true and correct copy thereof in the U.S. Mail in the City of Park Rapids, Minnesota, with postage prepaid, in an envelope directed and addressed to the names and addresses below and faxing to the designated entities a copy thereof:

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

Fax - 1-218-354-2235

David W. Fischer
12405 308th Street
Sebeka, MN56477

Robert Hoglund
P.O. Box 130938
Roseville, MN 55113

Fax - 1-651-628-9377

Sharon J. Fischer
12405 308th Street
Sebeka, MN 56477

Habbo G. Fokkena
U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Fax - 1-612-664-5516

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

Executed: September 16, 2004

Signed: Carissa A. Scholz

WALLACE & TIFFANY
ATTORNEYS AT LAW
LOCATED AT • 201 EAST FIRST STREET
PARK RAPIDS, MINNESOTA 56470
MAILING ADDRESS • P.O. BOX 27
PARK RAPIDS, MINNESOTA 56470

JAMES B. WALLACE
ROBERT D. TIFFANY

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2004 SEP 20 10:13 AM
U.S. BANKRUPTCY COURT
PARK RAPIDS, MN
TELEPHONE (218) 732-7279
TELEFAX (218) 732-8177

September 16, 2004

Clerk of U.S. Bankruptcy Court
205 U.S. PO Bldg
118 South Mill Street
Fergus Falls, MN 56537

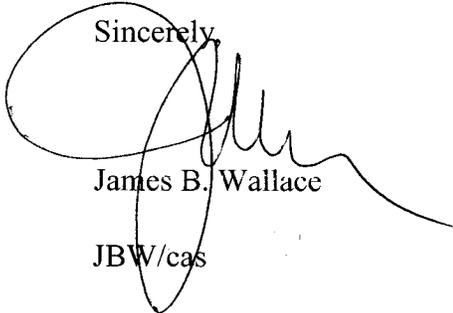
RE: David W. Fischer and Sharon J. Fischer, Debtors
Bankruptcy No. 04-60924
Our File No. 4097

Dear Clerk of Court:

Enclosed herewith for filing please find the following:

1. Notice of Hearing and Motion Objecting to Confirmation of Chapter 13 Plan and Dismissing Chapter 13;
2. Proposed Order;
3. Unsworn Declaration for Proof of Services; and
4. Diskette containing the file documents.

Sincerely,



James B. Wallace

JBW/cas

Enclosures

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

Bankruptcy No. 04-60924
Chapter 13

In re:

David W. Fischer and
Sharon J. Fischer,

Debtors.

ORDER

The above-entitled matter came before the Court on September 28, 2004 on Citizens National Bank of Park Rapids' Motion Objecting to Confirmation of Debtors' Plan. Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein,

IT IS HEREBY ORDERED that Confirmation of the Debtors' Chapter 13 Plan is denied and this proceeding is dismissed.

Dated this _____ day of _____, 2004.

United States Bankruptcy Judge