

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

ROBERT L. ARMSTRONG  
FRANCIS R. ARMSTRONG

Bky Case No 04-61053 DDO  
Chapter 13

Debtor(s)

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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 October 26, 2004 in Courtroom 2 – 2<sup>nd</sup> 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 October 21, 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 October 15, 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 September 3, 2004. This case is now pending in this Court.
5. This motion arises under 11 U.S.C. § 1322, 1325 and 1326 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 12, 2004 (the "Plan").
6. The Debtor, Robert Armstrong, states that he a truck driver with Andy's Garage. Schedule I shows his gross income at \$4355.44. After payroll taxes and other deductions, his net income is \$3268.22 per month. The Co-Debtor, Francis Armstrong, is listed as a full time homemaker with one 18-year-old son at home. Schedule J indicated that they have living expenses totaling \$3183.00 leaving a surplus of \$85.22. The Plan proposes to pay \$85.22 per month for 36 months or \$3067.92. After trustee's compensation, attorney's fees of \$750.00, home mortgage of \$2812.26, there is a negative cash flow of \$743.24. On the surface, the Plan is not feasible as proposed.

7. Schedule J shows that they are paying the State of Minnesota \$200.00 per month. It appears, and was discussed at the 341 meeting, that the Debtors owe the State of Minnesota approximately \$6000.00. The Plan does not reflect any payment to the State of Minnesota. If the State of Minnesota does, in fact, have a priority claim, those funds should come to the plan to pay claim, as filed, in full.
8. The Trustee objections because the Debtors fail to include all disposable income, all priority taxes should be paid in full in the plan, and the plan is not feasible as it reflects a negative cash flow.

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

Dated October 12, 2004

/s/ Michael J. Farrell

Michael J. Farrell, Trustee

Box 519

Barnesville, MN 56514

(218) 354-7356

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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):**

Robert L. Armstrong  
Francis R. Armstrong  
68272 State Hwy. 89  
Warroad, MN 56763

**Debtor's Attorney:**

Alan B. Fish  
109 2<sup>nd</sup> St. NE  
Roseau, MN 56751

**Additional Copy(s) addressed to:**

United States Trustee  
1015 U.S. Courthouse  
300 W. 4<sup>th</sup> St.  
Minneapolis, MN 55415

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

Dated: October 12, 2004

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

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This matter came before the Court on October 26, 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