

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY 03-38603 GFK

Kathy Lee Romero
Michael J. Romero,

Chapter 13

Debtors.

**NOTICE OF HEARING AND MOTION OBJECTING TO
CONFIRMATION OF CHAPTER 13 PLAN AND FOR DISMISSAL OF CASE**

TO: All parties entitled to notice under Local rule 9013-3:

1. Jasmine Z. Keller, Chapter 13 Trustee, moves the court for the relief requested below and gives notice of hearing.

2. **NOTE: CONTESTED MATTERS ONLY THAT WERE ORIGINALLY SCHEDULED TO BE HEARD BEFORE CHIEF JUDGE KISHEL ON SEPTEMBER 23, 2004, ARE CONTINUED FOR HEARING TO OCTOBER 28, 2004.** The Court will hold a hearing on this motion at 10:30 a.m. on **October 28, 2004**, in U.S. Bankruptcy Court, Courtroom 228B, Second Floor, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 27, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than October 25, 2004, which is three (3) business days before the time set for the hearing. **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, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This motion arises under 11 U.S.C. §1307 and Bankruptcy Rule 1017. The petition commencing this Chapter 13 case was filed on December 26, 2003. The case is now pending in this Court.

5. If testimony is necessary as to any facts relevant to this motion, an employee of the Chapter 13 Trustee, 310 Plymouth Building, Minneapolis, Minnesota, will testify on behalf of the movant.

6. The proposed modified plan (“the Plan”) calls for the Debtors to make payments to the Trustee of \$50.00 for 4 months, and \$200.00 for 48 months, for a total of \$9,800.00 from the date of the modified plan. Including the \$4,560.00 the Debtors have already paid, the total amount being paid into the plan is \$14,360.00 (“the Plan Funds”).

7. The Plan calls for the Plan Funds, net of the Trustee's estimated fee at 6.3% in the amount of \$838.79, to be disbursed as follows:

Bank of America:	\$ 5,336.94
MN Dept. of Revenue	199.74
Attorney Fees	1,250.00
Non-priority unsecured creditors	<u>6,734.53</u>
TOTAL	\$ 14,360.00

8. At filing, the Debtors estimated the total amount of their nonpriority unsecured debts to be \$64,602.95. Based upon estimated claims, the dividend to unsecured creditors is no more than 10%.

9. Southeast Region Child Support Unit filed Proof of Claim No. 16 in the amount of \$13,200.49, all of which is claimed as an unsecured claim with priority. No objection has been filed to this claim to date; therefore, the claim is deemed allowed under 11 U.S.C. § 502(a).

10. The Plan does not meet the requirement of 11 U.S.C. § 1322(a)(2) in that it fails to provide for the full payment of all priority and secured claims in full. Therefore, confirmation must be denied under 11 U.S.C. § 1322(a)(1) and 1325 (a)(6).

11. Movant requests that this case be dismissed because certain claims have been filed in an amount that exceeds the amount estimated by the Debtors in the Plan to such an extent that the Plan is now underfunded.

12. If testimony is required, the Trustee reserves the right to call a member of her staff and/or the Debtors to testify as to the merits of the pending Motion.

WHEREFORE, the Movant requests entry of an order denying confirmation of the Plan and dismissing this case, or converting this case to a case under Chapter 7, and for such other relief as the Court deems just and proper.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: September 13, 2004

/e/ Margaret H. Culp
Thomas E. Johnson, #52000
Margaret H. Culp, #180609
Chapter 13 General Counsel
310 Plymouth Building
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Margaret H. Culp, for Movant, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: September 13, 2004

/e/ Margaret H. Culp
Margaret H. Culp

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY 03-38603 GFK

Kathy Lee Romero
Michael J. Romero,

Chapter 13

Debtors.

**MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION AND
MOTION TO DISMISS CASE**

FACTS

The Trustee relies upon the facts set forth in her verified motion, which for the sake of brevity, will not be repeated here.

LEGAL DISCUSSION

One of the fundamental requirements for confirmation of a Chapter 13 plan is that a plan shall “provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary of the execution of the plan.” *11 U.S.C. § 1322(a)(1)*. Essentially, the debtor must propose a plan that is fully funded, in the sense that the debtor commits to making sufficient payments to pay all the amounts required to be paid to creditors under the proposed plan.

Here, the Debtors have only committed a total of \$14,360.00 to the Trustee, yet the allowed priority claims exceed the total, based upon the filed, and deemed allowed claim of Southeast Region Child Support Unit. *11 U.S.C. § 502 (a)*. The plan is underfunded, and therefore cannot be confirmed.

CONCLUSION

The Debtors’ Plan is not confirmable because they do not proposed sufficient payment to fully fund it. Confirmation should be denied and the case dismissed.

Respectfully submitted:

Dated: September 13, 2004

/e/ Margaret H. Culp
Thomas E. Johnson, #52000
Margaret H. Culp, #180609
Chapter 13 General Counsel
10 Plymouth Building
Minneapolis, MN 55402
(612) 338-7591

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Lora Meier, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 13, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Chapter 13 Plan and for Dismissal of Case; Memorandum in Support of Objection; and proposed Order Denying Confirmation and Dismissing Case on the individual(s) listed below, in the manner described:

By e-mail:

United States Trustee
1015 United States Courthouse
300 South 4th Street
Minneapolis, MN 55415

By first class U.S. mail, postage prepaid:

Kathy Lee romero
Michael J. Romero
1265 Bush Avenue
St. Paul, MN 55106

Edward F. Rooney, Esq.
5001 Chowen Avenue South
Minneapolis, MN 55410

James A. Geske
Wilford & Geske
7650 Currell Blvd., Suite 300
Woodbury, MN 55125

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

Executed: September 13, 2004

/e/ Lora Meier
Lora Meier

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Kathy Lee Romero
Michael J. Romero,

BKY 03-38603 GFK

Chapter 13

Debtors.

ORDER DENYING CONFIRMATION AND DISMISSING CASE

At St. Paul, Minnesota _____, 2004

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on Chapter 13 Trustee's Motion for denial of confirmation and for dismissal or conversion of the Chapter 13 case.

Appearances were as noted in the minutes.

Upon the foregoing motion, the arguments of counsel, and all of the files, records and proceedings herein:

IT IS ORDERED:

1. Confirmation of the Debtors' Plan is **DENIED**.
2. The Chapter 13 case is **DISMISSED**.

The Honorable Gregory F. Kishel
United States Bankruptcy Judge