IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Mary C. Savat,

Debtor.

Case No.: 04-30023-DDO

Chapter 13 Case

OBJECTION OF ESSIELEANERA ROBERTS
TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN

Pursuant to 11 U.S.C. §§ 1322 and 1325, Fed. R. Bankr. P. 3015, and Local Rule 3015-3, Essieleanera Roberts ("Ms. Roberts"), through her undersigned attorneys, objects to the Chapter 13 Plan (the "Plan") filed by Mary C. Savat (the "Debtor").

1. Until recently, the Debtor was married to Jeffrey A. Knutson ("Mr. Knutson"), the sole shareholder of J.A.K. Enterprises, a Minnesota corporation engaged in, *inter alia*, the residential construction business.

2. From at least 2001 until 2003, the Debtor was an agent of J.A.K. Enterprises and handled the company's financial affairs.

3. In September 2001, Ms. Roberts hired J.A.K. Enterprises to rebuild her residence, which had been partially destroyed by fire.

4. Over the course of the project, J.A.K. Enterprises took a larger profit than it was entitled to, failed to pay subcontractors and suppliers, and used cheaper materials than those originally agreed to by the parties.

5. Then, after having been paid $665,800, in August 2002, J.A.K. Enterprises walked off the project, leaving the project unfinished and subcontractors and suppliers unpaid.

6. On December 10, 2002, Ms. Roberts brought suit (the "State Court Lawsuit") in Hennepin County District Court (the "District Court") against Mr. Knutson, J.A.K. Enterprises, and the Debtor (collectively, the "Defendants"). A copy of the Complaint filed by Ms. Roberts in the State Court Lawsuit is attached to this Objection as Exhibit A.

7. In the State Court Lawsuit, Ms. Roberts brought, *inter alia*, a claim against the Debtor for violations of Minn. Stat. § 514.02. Exhibit A.

8. After several months of discovery in the State Court Lawsuit, the magnitude of the Defendants' unlawful conduct came to light. The Defendants refused to account for more than $300,000 of the $665,800 Ms. Roberts had paid them. A copy of Defendants' Answers and Supplemental Answers to Plaintiff's Interrogatories and Responses to Request for Production of Documents (Set I) are attached to this Objection as Exhibit B.

9. In addition, the Defendants owe another approximately $43,000 to suppliers and subcontractors for their work on the project. A copy of unpaid project invoices is attached to this Objection as Exhibit C.

10. Ms. Roberts paid an additional $70,645.41 out of her own funds to project suppliers and subcontractors who were not paid by J.A.K. Enterprises. Exhibit D.

11. Alarmed by the Defendants' refusal to account for such a large amount of her money, on April 25, 2003, Ms. Roberts moved the District Court in the State Court Lawsuit for pre-judgment attachment of the Defendants' assets pursuant to Minn. Stat. §§ 570.02 and 570.026.

12. On May 22, 2003, the District Court granted Ms. Roberts' attachment motion, attached an initial list of the Defendants' property, and ordered the Defendants to make a more

complete disclosure of their assets. A copy of the District Court Order and Memorandum is attached to this Objection as Exhibit E.

13. As they had done on the construction project, the Defendants then engaged in another round of deceit with the District Court and with Ms. Roberts. First, the Defendants resisted disclosing all of their assets to the District Court. A copy of Ms. Roberts' memoranda in support of her Motion for Contempt and for an Award of Attorneys' Fees is attached to this Objection as Exhibit F.

14. When Ms. Roberts challenged the Defendants' asset disclosures, the Debtor admitted that she had not disclosed a $3,000 sewing machine, though the sewing machine was the Defendants' most valuable household asset. The Debtor also failed to disclose this sewing machine despite having previously disclosed to the District Court another sewing machine valued at $50. The Debtor also admitted that she had not previously disclosed to the District Court a $1,200 computer and a printer/fax/monitor purchased recently, though these too ranked among her most valuable household assets. Exhibit F.

15. Currently, the District Court has under advisement a motion for contempt based, in part, on Defendants' failure to disclose assets.

16. With discovery now complete in the State Court Lawsuit, it appears that the $300,000 missing from Ms. Roberts' project was taken as profit by Mr. Knutson and the Debtor.

17. In her deposition, the Debtor testified to withdrawing from J.A.K. Enterprises $104,400 in dividends or distributions. The Debtor forged Mr. Knutson's signature on the back of the checks to endorse them for deposit. The Debtor admitted under oath that she decided the amount of the dividends or distributions based on her "personal bills." A copy of the Deposition of Mary Savat, pp. 22-35, 39 and cancelled checks is attached to this Objection as Exhibit G.

18. The Debtor's deposition testimony directly contradicted her earlier sworn statement to the District Court that she did "not receive a salary, *dividend*, loan repayment, *capital distribution* or *any type of financial compensation* from JAK" Enterprises. A copy of the Affidavit of Mary Savat is attached to this Objection as Exhibit H. (emphasis supplied.)

19. The Debtor also wrote and signed $9,800 in checks made payable to "Cash" drawn on the J.A.K. Enterprises checking account. A copy of cancelled checks made payable to "Cash" and signed by the Debtor is attached to this Objection as Exhibit I.

20. On August 12, 2003, Mr. Knutson filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code.

21. On November 11, 2003, Ms. Roberts reached a settlement of her claims against Mr. Knutson and J.A.K. Enterprises. In connection with the settlement, J.A.K. Enterprises signed a Confession of Judgment. A copy of the Settlement Agreement is attached to this Objection as Exhibit J.

22. On November 13, 2003, the parties attended a pretrial/settlement conference with the District Court Judge presiding over the State Court Lawsuit. A copy of the Scheduling Order in the State Court Lawsuit is attached to this Objection as Exhibit K.

23. Also on November 13, 2003, the District Court issued an Order setting the State Court Lawsuit for trial the week of February 16, 2004, or February 23, 2004. A copy of the Order Setting Trial Date is attached to this Objection as Exhibit L.

24. On December 22, 2003, the District Court granted from the bench Ms. Roberts' motion to amend the complaint to add a claim for unjust enrichment against the Debtor. A copy of the Amended Complaint is attached to this Objection as Exhibit M.

25. In the State Court Action, the Debtor disclosed assets that she did not disclose in her voluntary petition. For example, the Debtor owns and is the beneficiary of life insurance policies. Exhibit N. In addition, the Debtor owns a $3,000 sewing machine and other electronic equipment that she did not identify in her voluntary petition. Exhibit O.

26. As discussed in more length in the attached Memorandum of Law, Ms. Roberts objects to confirmation of the Plan because the Plan fails to meet the requirements for confirmation under 11 U.S.C. § 1325.

27. If witnesses are necessary, Ms. Roberts, who resides at 2935 Minnehaha Curve, Wayzata, MN, will testify.

Dated: January 15, 2004

GRAY PLANT MOOTY MOOTY & BENNETT, P.A.

By:/e/Christopher M. McCullough

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ATTORNEYS FOR ESSIELEANERA ROBERTS

GP:1541133 v1

PAGE 1/2 * RCVD AT 1/15/2004 12:51:00 PM [Central Standard Time] * SVR:GPFAX/0 * DNIS:4332 * CSI

VERIFICATION

I, Essieleanera Roberts, movant in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed on: 01-15-04

Signed: Essieleanera Roberts

GP:1541133 v1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Mary C. Savat,

Debtor.

Case No.: 04-30023-DDO

Chapter 13 Case

SUMMARY OF EXHIBITS ATTACHED TO OBJECTION OF ESSIELEANERA ROBERTS TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN

Pursuant to Local Rule 9013-2(e), because of the voluminous nature of the exhibits identified in the Objection, Essieleanera Roberts, through her undersigned attorneys, provides the following Summary of Exhibits (the "Summary"). The full exhibits will be made available upon reasonable request from counsel for Ms. Roberts. All capitalized terms in this Summary have the meaning identified in the Objection.

1. Exhibit A. Complaint filed by Ms. Roberts to initiate the State Court Lawsuit.

2. Exhibit B. Defendants' Answers and Supplemental Answers to Plaintiff's Interrogatories and Responses to Request for Production of Documents (Set I) as part of discovery during State Court Lawsuit.

3. Exhibit C. Copies of various unpaid invoices for the project J.A.K. Enterprises agreed to complete for Ms. Roberts.

4. Exhibit D. Copies of various estimates for the unfinished work for the project J.A.K. Enterprises agreed to complete for Ms. Roberts.

5. Exhibit E. The District Court's Order and Memorandum with respect to Ms. Roberts' Motion for Attachment.

6. Exhibit F. Ms. Roberts' Memoranda in support of her Motion for Contempt and for an Award of Attorneys' Fees.

7. Exhibit G. Transcript of the Deposition of Mary Savat, pp. 22-35, 39. and various cancelled checks pertaining to Ms. Savat's testimony.

8. Exhibit H. Affidvit of Mary Savant.

9. Exhibit I. Copies of various cancelled checks made payable to "Cash" and signed by the Debtor.

10. Exhibit J. Settlement Agreement between Ms. Roberts and Jeffrey A. Knutson and J.A.K. Enterprises.

11. Exhibit K. Scheduling Order in the Sate Court Lawsuit.

12. Exhibit L. Order Setting Trial in the State Court Lawsuit.

13. Exhibit M. Ms. Robert's Amended Complaint filed in the State Court Lawsuit.

14. Exhibit N. Disclosure of life insurance assets by the Debtor in the State Court Lawsuit.

15. Exhibit O. Disclosure of personal property assets by the Debtor in the State Court Lawsuit.

Dated: January 15, 2004

GRAY PLANT MOOTY MOOTY &
BENNETT, P.A.

By:/e/Christopher M. McCullough .

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ATTORNEYS FOR ESSIELEANERA ROBERTS

GP:1541192 v1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Mary C. Savat,

Debtor.

Case No.: 04-30023-DDO

Chapter 13 Case

MEMORANDUM OF LAW IN SUPPORT OF OBJECTION OF ESSIELEANERA ROBERTS TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN

Pursuant to 11 U.S.C. §§ 1322 and 1325, Fed. R. Bankr. P. 3015, and Local Rule 3015-3, Essieleanera Roberts, through her undersigned attorneys, submits this Memorandum of Law in Support of her Objection to Confirmation of Debtor's Chapter 13 Plan.

FACTS

The facts are provided in the Objection that accompanies this Memorandum and are hereby incorporated by reference into this Memorandum. All capitalized terms in this Memorandum have the meaning identified in the Objection.

ARGUMENT

To be confirmable, a chapter 13 plan must satisfy the requirements of 11 U.S.C. § 1325. The Plan fails to comply with 11 U.S.C. § 1325(a)(3). Consequently, this Court should not confirm the Plan.

THE DEBTOR CANNOT MEET THE GOOD FAITH REQUIREMENT OF 11 U.S.C. § 1325(a)(3).

In *In re Soost*, 290 B.R. 116 (Bankr. D. Minn. 2003), the Court identified the factors relevant to the determination of whether a debtor has proposed a Chapter 13 plan in good faith.

Though "the court must consider the totality of the circumstances" on the question of good faith, the following objective factors should be considered:

> the debtor's candor and honesty with the court in the bankruptcy case; the conformity of the plan with the policy goals of the bankruptcy laws; the debtor's expressed attitude, past and present, toward the legal process and its values; the extent to which the debtor's past conduct conformed with the substantive law that governed his relationship(s) with creditor(s); and the debtor's past conduct in relation to the integrity of the legal system.

In re Soost, 290 B.R. at 122 (citations omitted). The court may also "consider the fundamental fairness of the debtor's proposed treatments of creditors' claims." *Id.* In sum, the relevant inquiry regarding good faith is "whether the debtor has stated his debts and expenses accurately; whether he has made any fraudulent misrepresentation to mislead the bankruptcy court; or whether he has unfairly manipulated the Bankruptcy Code." *Education Assistance Corp. v. Zellner,* 827 F.2d 1222, 1227 (8th Cir. 1987).

Here, the Debtor cannot show "good faith" because: (1) she unfairly manipulated the Bankruptcy Code by filing her voluntary petition solely to avoid a trial in the State Court Lawsuit; (2) she has attempted to deceive this Court by failing to disclose assets and misstating her debt to Ms. Roberts; (3) she acted with deceit in the State Court Lawsuit by attempting to hide assets from the District Court and from Ms. Roberts; and (4) she violated Minnesota law in her pre-litigation dealings with Ms. Roberts.

1. The Debtor Filed Her Voluntary Petition for the Sole Purpose of Avoiding a Trial in the State Court Lawsuit.

"[T]he Debtor's motivation in seeking chapter 13 relief is a factor that must be considered when determining good faith, and where a debtor's behavior exhibits a pattern of manipulation, such conduct should not be rewarded in bankruptcy." *In re Banks*, 248 B.R. 799, 805, n.2 (B.A.P. 8th Cir. 2000) (citation omitted). Here, the Debtor filed her petition

approximately five weeks before the trial date in the State Court Lawsuit. The Debtor will not be able to show that there was any material change in her financial condition that prompted her to file for Chapter 13 protection. Rather, the sole reason for her filing was to prevent Ms. Roberts from pursuing her claims against the Debtor in the State Court Lawsuit.

Thus, the Debtor's bankruptcy filing was an attempt to thwart Ms. Roberts, not repay her. *See In re Larson*, 245 B.R. 609, 616 (Bankr. D. Minn. 2000) (citing *In re Mattson*, 241 B.R. 629, 637 (Bankr. D. Minn. 1999)). Otherwise put, the Debtor's filing had nothing to do with formulating a repayment plan and everything to do with avoiding her obligation to testify about her misappropriation of over $100,000 of Ms. Roberts' money. Such conduct evidences a "pattern of manipulation" and thus weighs against a finding of "good faith." *In re Banks*, 248 B.R. at 805, n.2.

2. The Debtor Has Misrepresented Her Debts and Assets to This Court.

"[T]he debtor's candor and honesty with the court in the bankruptcy case" is a factor probative of whether the Debtor has filed for bankruptcy in "good faith." *In re Soost,* 290 B.R. at 122 (citations omitted). In Schedule B, the Debtor claims that she does not have any interests in insurance policies. This is false. In the State Court Lawsuit, the Debtor disclosed that she owns and is the beneficiary of several life insurance policies. Indeed, in Schedule J, the Debtor has stated that she pays $400.00 per month for life insurance.

The Debtor also did not disclose in Schedule B numerous items of personal property that she was forced to disclose in the State Court Lawsuit. For example, the Debtor did not disclose her $3,000 sewing machine, which was the subject of an affidavit from her in the State Court Lawsuit.

As for her debts, the Debtor's scheduling of her debt to Ms. Roberts at $50,000 in Schedule F does not comport with the evidence in the State Court Lawsuit. The underlying debt arose out of a residential construction project that the Debtor's ex-husband's business, J.A.K. Enterprises, performed, in part, for Ms. Roberts. J.A.K. Enterprises agreed to do the project for cost and to pay subcontractors and suppliers directly. During the project, the Debtor handled the financial affairs of J.A.K. Enterprises.

The Debtor testified at her deposition in the State Court Lawsuit that she helped herself to over $100,000 in dividends or distributions and nearly $10,000 in cash out of Ms. Roberts' funds that had been paid to J.A.K. Enterprises. The Debtor took these distributions while suppliers and subcontractors went unpaid, the project unfinished, and the company was representing that it was doing the project for cost. Thus, the $50,000 claimed by the Debtor as the debt to Ms. Roberts is less than half of the actual debt, and her proposed plan lacks "fundamental fairness." *In re Soost*, 290 B.R. at 122.

3. The Debtor Attempted to Deceive Ms. Roberts and the District Court in the State Court Lawsuit.

"The debtor's expressed attitude, past and present, toward the legal process and its values" and her "past conduct in relation to the integrity of the legal system" demonstrate the Debtor's complete disregard for court rules and a willingness to engage in deceit when it serves her interests. *In re Soost*, 290 B.R. at 122. In the State Court Lawsuit, the Debtor repeatedly refused to disclose assets to the District Court after Ms. Roberts had obtained an Order for Attachment of the Debtor's property. When the District Court ordered the Debtor to disclose her assets, the Debtor twice failed to disclose a $3,000 sewing machine (her most valuable household asset at the time) and a $1,200 computer, though the Debtor had previously disclosed to the District Court another sewing machine valued at $50.

The Debtor also attempted to deceive the District Court when she submitted an affidavit claiming that she did "not receive a salary, *dividend*, loan repayment, *capital distribution* or *any type of financial compensation* from JAK" Enterprises. (emphasis supplied.) The Debtor contradicted this assertion when, as stated above, she testified to taking in excess of $100,000 in dividends or distributions from J.A.K. Enterprises. In sum, the Debtor's "expressed attitude, past and present, toward the legal process and its values" is one of manipulation and deceit, and she cannot make a showing of "good faith." *In re Soost*, 290 B.R. at 122.

4. The Debtor Has Violated Minn. Stat. § 514.02.

Also relevant to the good faith determination is whether the "debtor's past conduct conformed with the substantive law that governed his relationship(s) with creditor(s)." *In re Soost*, 290 B.R. at 122. Here, the Debtor's relationship with Ms. Roberts was governed by Minnesota common law and, most importantly for purposes of this objection, Minn. Stat. § 514.02. This Minnesota statute makes it unlawful for a contractor to fail to use the proceeds of payments made to it to pay for labor and material contributed to the improvement of property, knowing that the cost of the labor performed or material furnished remained unpaid. In addition, Minn. Stat. § 514.02 imposes liability upon a person who knowingly receives benefits from the misappropriated funds and provides for an award of attorneys' fees and costs to the prevailing party.

As discussed above, the Debtor misappropriated over $100,000 of funds Ms. Roberts had paid to J.A.K. Enterprises for her construction project, while suppliers and subcontractors went unpaid. Moreover, as the person responsible for the financial affairs of J.A.K. Enterprises, the Debtor knew that the funds taken by her were required for the project. Thus, under Minn. Stat. § 514.02, the Debtor is personally liable for the funds that she misappropriated from the project,

and she has violated "the substantive law that governed h[er] relationship" with Ms. Roberts." *In re Soost*, 290 B.R. at 122.

CONCLUSION

WHEREFORE, for the foregoing reasons, Ms. Roberts respectfully requests that this Court deny confirmation of the Debtor's Chapter 13 Plan.

Dated: January 15, 2004

GRAY PLANT MOOTY MOOTY & BENNETT, P.A.

By:/e/Christopher M. McCullough

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ATTORNEYS FOR ESSIELEANERA ROBERTS

GP:1541132 v1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Mary C. Savat,

Debtor.

Case No.: 04-30023-DDO

Chapter 13 Case

UNSWORN CERTIFICATE OF SERVICE

Debra L. Schumacher, employed by Gray, Plant, Mooty, Mooty & Bennett, P.A., attorneys licensed to practice law in this Court, with office address at 500 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota, 55402, declares under penalty of perjury that on **January 15, 2004**, she caused to be served true and correct copies of the following documents upon those parties on the attached service list via first class mail, postage pre-paid:

1. *Objection of Essieleanera Roberts to Confirmation of Debtor's Chapter 13 Plan;*
2. *Verification;*
3. *Summary of Exhibits to Objection of Essieleanera Roberts to Confirmation of Debtor's Chapter 13 Plan;*
4. *Memorandum of Law in Support of Objection of Essieleanera Roberts to Confirmation of Debtor's Chapter 13 Plan; and*
5. *Proposed Order.*

Executed on: January 15, 2004 Signed: Debra L. Schumacher

Debra L. Schumacher

GP:1541260 v1

SERVICE LIST

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GP:1541260 v1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Mary C. Savat,

Debtor.

Case No.: 04-30023-DDO

Chapter 13 Case

ORDER DENYING CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN

The above-captioned matter came on for hearing before the Court upon the Verified Objection to Debtor's Chapter 13 Plan filed by Essieleanera Roberts. Based on the arguments of counsel, the Verified Objection, and all of the files and records in this case, it appearing that notice was adequate, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

That confirmation of the Debtor's Chapter 13 Plan is denied.

Dated:_____

BY THE COURT

_____
Hon. Dennis D. O'Brien
U.S. BANKRUPTCY JUDGE

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