

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

*Thomas J. Tyler and
Cynthia L. Tyler,*

BKY 04-30146 GFK

Chapter 13 Case

Debtors.

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

TO: All parties in interest pursuant to Local Rule 9013-3:

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), by and through her undersigned attorney, moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 10:30 a.m. on August 26, 2004, in Courtroom 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on August 25, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than August 23, 2004, which is three 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. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Chapter 13 petition commencing this case was filed on January 12, 2004. The case is now pending in this court.

5. 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, 9006-1, 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 January 12, 2004 (the "Plan").

6. The Debtors propose to pay \$275 per month for 36 months to the Trustee, for a total of \$9,900 ("Plan Funds"). The Debtors propose to distribute the Plan Funds as

follows:	Attorneys' fees	\$ 1,100.00
	Trustee fees	560.38 (6.0%)
	Unsecured creditors	8,239.62
	TOTAL	\$ 9,900.00

7. This case has been continued from month to month awaiting the recent decision by the Minnesota Supreme Court regarding the exemption of IRAs under the Minn. Stat. § 550.37, subd. 24. That issue has now been resolved in favor of the Debtors.

8. On March 15, 2004, G.E. Capital/Suzuki ("Suzuki") filed Claim No. 12 as a secured claim in the amount of \$8,268.99, describing its collateral as a "motor vehicle."

9. The Debtors' Schedule B does not appear to disclose the collateral; the Debtors' interest in the collateral, if any, has not been exempted on Schedule C; and, there is no mention of the secured claim on Schedule D. No objection has been filed to Claim No. 12. As such, the claim is deemed allowed pursuant to 11 U.S.C. § 506.

10. The Plan makes no provision for payment of this claim in violation of 11 U.S.C. § 1325(a)(5). For this reason, confirmation should be denied.

11. On June 14, 2004, the Minnesota Department of Revenue ("MDR") timely filed Proof of Claim No. 16 in the amount of \$327 as an unsecured claim with priority. No objection has been filed to Claim No. 16. As such, the claim is deemed allowed pursuant to 11 U.S.C. § 506.

12. The Plan makes no provision for payment of this claim in violation of 11 U.S.C. § 1322(a)(2). For this reason, confirmation should be denied.

13. The Debtors are current in their payments to the Chapter 13 Trustee through the month of August 2004.

14. If necessary, the Debtors and/or representatives of the Chapter 13 Trustee may be called to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests that confirmation of the Debtors' proposed Chapter 13 plan be denied, and such other relief as may be just and equitable.

Dated: August 16, 2004

Jasmine Z. Keller, Trustee
/e/ Margaret H. Culp
 Thomas E. Johnson, ID # 52000
 Margaret H. Culp, ID # 180609
 Counsel for Chapter 13 Trustee
 12 South 6th Street, Suite 310
 Minneapolis, MN 55402-1521
 (612) 338-7591

VERIFICATION

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, the movant named 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: August 16, 2004

/e/ Margaret H. Culp

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MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies on the representations made by the Debtors in their verified Schedules and Statements on file and of record herein.

LEGAL DISCUSSION

1. Chapter 13 Plans must provide for payment of each secured claim.

Pursuant to 11 U.S.C. § 1325(a)(5), with respect to secured claims, a Chapter 13 plan must provide that the holder of a secured claim retains its lien securing the claim, and that the value, as of the effective date of the plan, of property to be distributed under the plan on account of such a secured claim, must not be less than the allowed amount of such claim. *11 U.S.C. § 1325(a)(5)(B)(i) and (ii)*. The Plan in this case makes no provision, either through direct payment or payments through the Plan, for payment of Claim No. 12. Indeed, the Debtors' schedules fail to disclose their ownership interest in the asset securing the claim of G.E. Capital/Suzuki. Accordingly, the Debtors' schedules appear to have omitted disclosure of their interest in all of their personal property as of the date of filing. By failing to provide for treatment of the Plan violates the Statute, and confirmation should be denied.

2. Chapter 13 Plans must provide for full payment, in deferred cash payments, of all claims entitled to priority under 11 U.S.C. § 507.

The Plan makes no provision for the claim of MDR in violation of 11 U.S.C. § 1322(a)(2). There is no evidence that MDR has agreed to different treatment of its claim. *11 U.S.C. § 1322(a)(2)*. While the Local Form Plan does include a generic provision providing for payment of all claims entitled to priority, it references claims listed in Paragraph 3. As such, known priority claims should be listed specifically and provided for in the Plan. Because the Plan does not provide for MDR's claim, confirmation should

be denied.

CONCLUSION

For the reasons stated herein, confirmation of the Debtors' proposed Chapter 13 plan should be denied.

Dated: August 16, 2004

Respectfully submitted:

/e/ Margaret H. Culp

Thomas E. Johnson, ID # 52000

Margaret H. Culp, ID # 180609

Counsel for Chapter 13 Trustee

12 S. 6th Street, Suite 310

Minneapolis, MN 55402-1521

(612) 338-7591

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on August 16, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Plan, Memorandum of Facts and Law and proposed Order on the individual(s) listed below, in the manner described:

By electronic means:

United States Trustee
612-664-5516

Becky A. Moshier, Esq.
651-645-1022

By first class U.S. mail:

Thomas J. Tyler
Cynthia L. Tyler
6260 337th Street
Stacy, MN 55079

Becky A. Moshier, Esq.
2233 University Avenue West, Suite 420
St. Paul, MN 55114

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

Executed: August 16, 2004

/e/ Margaret H. Culp

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ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN

At St. Paul, MN, _____, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to confirmation of the Debtors' proposed Chapter 13 plan.

Appearances were noted in the minutes.

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

IT IS ORDERED:

Confirmation of the Debtors' proposed Chapter 13 plan filed 1/12/04 is **DENIED**.

Gregory F. Kishel
Chief United States Bankruptcy Judge