

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY 04-31279 GFK

Brian E. Boysen,

Chapter 13 Case

Debtor.

**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. June 24, 2004 in Courtroom 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota. **PLEASE NOTE THAT CONTESTED MATTERS ONLY ARE CONTINUED FOR HEARING FROM MAY 27, 2004 AT 10:30 A.M. TO JUNE 24, 2004 AT 10:30 A.M. 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 June 23, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than June 21, 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 case was filed on March 4, 2004, and 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 Debtor's proposed Chapter 13 plan dated March 4, 2004 (the "Plan").

6. The Debtor proposes to pay \$190 per month for 36 months to the Trustee, for a total of \$6,840 (“Plan Funds”). Proposed distribution of Plan Funds is as follows:

Attorneys’ Fees	\$ 750.00
Trustee fees	387.17 (6.0%)
Unsecured creditors	5,702.83

7. Based upon estimated claims of \$151,318, the proposed return to general unsecured creditors is no more than 4%.

8. Based upon Schedule A, the Debtor has an interest in real property that he occupies as his homestead located at 8351 278th Street East, Elko, Scott County, Minnesota, which he claims as his exempt homestead under 11 U.S.C. § 522(b)(1), the “federal exemptions,” and which he values in Schedule A of the Petition at \$259,900.

9. Based upon Scott County property tax information, for 2004, the property is valued for tax purposes at \$278,700. A copy of the Scott County property information is incorporated herein and attached hereto as Exhibit A.

10. Based upon the petition value, the Debtor’s equity in his homestead is \$19,900. Using the Scott County property information, the Debtor’s equity in his homestead is \$38,700.

11. It is the Trustee’s position that the Scott County property information provides a more accurate assessment of the Debtor’s equity in his homestead.

12. The Trustee has filed an objection to claimed exempt property, which is scheduled for hearing at 1:30 p.m. on June 14, 2004.

13. Assuming the Debtor’s listed values, the Debtor has the following non-exempt personal property, which he claimed as exempt under 11 U.S.C. § 522(d)(5):

<u>Property</u>	<u>Value</u>
Anticipated 2003 tax refunds	\$ 2,500
New Market Bank Checking & Savings Accounts	40
U.S. Bank Checking Account	20
1997 ZR Arctic Cat Snowmobile	<u>1,500</u>
<u>Total</u>	<u>\$ 4,060</u>

14. If the Trustee’s objection to claimed exempt property is sustained, the Debtor must pay to his creditors an additional \$4,060 to meet the “best interest” test under 11 U.S.C. § 1325(a)(4).

15. Comparing the amount the Plan proposes to pay to unsecured creditors

(\$5,702.83) and adding the value of additional non-exempt property (\$4,060), the Plan does not meet the “best interest of creditors” test. *11 U.S.C. § 1325(a)(4)*.

16. If necessary, the Debtor 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 Debtor’s proposed Chapter 13 plan be denied, and such other relief as may be just and equitable.

Jasmine Z. Keller, Trustee

Dated: May 25, 2004

/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: May 25, 2004

/e/ Margaret H. Culp



Scott County Property Information Search Results

General Property Information

Property ID:	08-933026-1
Roll Type:	Real Estate
Payable Year:	2005
Owner Name:	BOYSEN,BRIAN
Property Address:	8351 278 ST E
City/State/Zip:	ELKO MN 55020
Taxpayer Name:	BOYSEN,BRIAN
Taxpayer Mailing Address:	
House Address:	8351 278 ST E
City/State/Zip:	ELKO MN 55020

Legal Description Information

Lot/Block/Plat#:	
Section/Township/Range:	33 113 021
Deeded Acres:	10.00
Legal Description:	SECT-33 TWP-113 RNG-021 NW1/4 SE1,

Miscellaneous Information

School District:	721
Taxing District Code:	1004
Taxing District Name:	NEW MARKET TWP

EXHIBIT A

Valuation & Tax Information

(The tax figure shown may or may not be calculated on the total estimated market value as shown. Programs such as This Old House, plat deferment, limited market value and green acres may reduce the indicated market value to a taxable market value upon which taxes would be calculated.)

Estimated Market Value of Land:	\$126,000
Estimated Market Value of Building:	\$152,700
Estimated Market Value Total:	\$278,700
Total Net Taxes for Current Year:	\$0.00
Total Special Assessments Due for Current Tax Year:	\$0.00
Total Net Tax plus Special Assessments:	\$0.00
Outstanding Special Assessments:	\$0.00
Payments:	\$0.00
Green Acres:	
Ag Preserve:	

Tax Classifications

Property Type:	RESIDENTIAL
Homestead Status:	Y
Exempt Status:	

Sales Information

Last Qualified Sale:	01/30/2002
Amount:	\$259,900.00

Building Characteristics

Type:	RES
Year Built:	1975
Architectural Style:	RAMBLER

Foundation Size (Sq Ft):	1,404
Garage Size (Sq Ft):	1224
Bedrooms:	0
Bathrooms:	0.00

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[Owner Name Search](#) | [Legal Description Search](#) |
[CRV Search](#) | [Property Tax Estimator](#)

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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

Bankruptcy Code section 1325(a)(4) requires that "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date".... *11 U.S.C. § 1324(a)(4)*. In this case, based upon the claim for exemption of real property not apparently owned or occupied at the time of filing, together with items listed in Schedule B filed by the Debtor, and the values listed for each non-exempt asset, the Debtor's Plan fails to meet the "best interest of creditors test" because the amount to be paid to unsecured creditors is not more than they would receive if a Chapter 7 Trustee liquidated his non-exempt assets.

CONCLUSION

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

Dated: May 25, 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 May 25, 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

Wayne G. Nelson, Esq.
763-591-1653

By first class U.S. mail:

Wayne G. Nelson, Esq.
5500 Wayzata Boulevard, Suite 1025
Golden Valley, MN 55416

Brian E. Boysen
8351 278th Street East
Elko, MN 55020

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

Executed: May 25, 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 Debtor's proposed Chapter 13 plan dated 3/4/04 is **DENIED**.

Gregory F. Kishel
Chief United States Bankruptcy Judge