

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY 04-31943

Henry Carl Buchmeier
Darlene Lucille Buchmeier,

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. Michael J. Farrell, Chapter 13 Trustee (the "Trustee"), by and through his 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 10:00 a.m. on August 12, 2004 in Courtroom 228A, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101.

3. Any response to this motion must be filed and delivered not later than 10:00 a.m. on August 11, 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 9, 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. This proceeding converted from a Chapter 7 case to a Chapter 13 case. The petition commencing a chapter 7 case was filed on March 31, 2004, and was converted to a Chapter 13 case on June 10, 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' Chapter 13 Plan dated June 10, 2004 (the "Plan").

6. The Plan provides that the debtors will pay the Trustee \$250.00 per month

for 60 months, for a total of \$15,000.00 (the “Plan Funds”).

7. According to the debtors’ schedule the debtor husband is employed as a laborer at McDonalds and his Schedule I shows gross monthly income of \$674.52. The husband has \$51.59 deducted in payroll taxes and social security. The debtor husband also receives \$1,232.00 from Social Security. According to the debtors’ schedule the debtor wife is employed as a driver with Bennett Driveway and her Schedule I shows gross monthly income of \$1,219.16. After debtor wife’s total deductions of \$754.51, the debtors combined net monthly income is \$2,319.58. However, the debtor wife testified that she has changed jobs and currently earns more income than reported in Schedule I.

8. The debtors’ Schedule J shows household expenses of \$2,069.00 per month.

9. On information available to the Trustee from the petition, schedules, statements, and testimony at the 341 Meeting, it appears the Debtors have additional income, the amount of which must be contributed to the chapter 13 plan.

10. The Debtors and the Trustee mutually agreed the additional income should go toward the plan and thus their monthly plan payment should be greater than is currently reflected in their plan. The Trustee has asked the Debtors to modify their plan to provide for payment of the additional income into the plan. To date, the Debtors have failed to modify their plan as requested by the Trustee.

11. The Trustee objects to confirmation of the Plan on the grounds that the debtors’ proposed plan does not meet either of the alternative requirements for confirmation under 11 U.S.C. 1325(b)(1), in that it does not propose full payment of their unsecured claims, nor does it devote all of the debtors’ projected “disposable income” as that term is defined in 11 U.S.C. §1325(b)(2) for the next 36 months toward their plan payments. A debtor under chapter 13 should contribute all disposable income to the debtor’s plan. *In re McDaniel*, 126 B.R. 782, 784 (Bankr. D. Minn. 1991). “Disposable Income” includes all of a debtor’s income which is “not reasonably necessary to be expended” by the debtor. 11 U.S.C. §1325(b)(2).

12. If necessary, the debtors, and an employee of the Trustee may be called to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests an order as follows:

1. Denying confirmation of the debtors' Chapter 13 plan dated June 10, 2004.
2. For such other relief as may be just and equitable.

Ulvin and Sullivan Attorneys PA

Dated: July 22, 2004

By: /e/ Patti J. Sullivan
Patti J. Sullivan, ID # 170124
Counsel for Chapter 13 Trustee
P.O. Box 16406
St. Paul Minnesota
(651) 699-4825

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Henry Carl Buchmeier
Darlene Lucille Buchmeier,

Debtors.

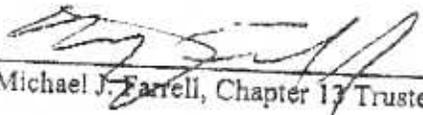
BKY 04-31943

Chapter 13 Case

VERIFICATION

I, Michael J. Farrell, 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: 7-21-04



Michael J. Farrell, Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY 04-31943

Henry Carl Buchmeier
Darlene Lucille Buchmeier,

Chapter 13 Case

Debtors.

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 upon the verified Schedules on file and of record herein.

LEGAL DISCUSSION

The Bankruptcy Code provides that the Court may not confirm a plan over the objection of the trustee unless the plan provides that all of the debtor's projected disposable income will be applied to make payments under the plan. 11 U.S.C. §1325(b)(1)(B). "Disposable income" is defined in 11 U.S.C. §1325(b)(2)(A) as "income which is received by the debtor and which is not reasonably necessary to be expended... for the maintenance or support of the debtor or a dependent of the debtor. Essentially, this statute requires the debtors to propose a plan that is fully funded, in the sense that the debtors commit to making sufficient payments to pay all the amounts required to be paid to creditors under the proposed plan. A debtor under chapter 13 should contribute all disposable income to the debtor's plan. *In re McDaniel*, 126 B.R. 782, 784 (Bankr. D. Minn. 1991). Upon objection under 11 U.S.C. §1325(b), the debtor must prove that the plan commits all of debtor's disposable income over the three-year period. *In re Sitarz* 150 B.R. 710, 718 (Bankr. D. Minn. 1993).

Here, the debtors testified as to having additional disposable income yet the plan has not been amended to include such additional income. It is unreasonable for the debtors not to amend their plan to include the excess income. Accordingly, the debtors' plan should be denied, as all of their disposable income has not been committed to the plan.

CONCLUSION

For the reasons stated herein, the Trustee respectfully requests that confirmation of the debtors' proposed Chapter 13 plan be denied.

Respectfully submitted:
Ulvin and Sullivan Attorneys, P.A.

Dated: July 22, 2004

/e/ Patti J. Sullivan
Patti J. Sullivan, ID # 170124
Counsel for Chapter 13 Trustee
P.O. Box 16406
St. Paul Minnesota 55116
(651)-699-4825

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Henry Carl Buchmeier
Darlene Lucille Buchmeier,

Debtors.

BKY 04-31943

Chapter 13 Case

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Joeline Kissinger, legal assistant, for attorneys for the Chapter 13 Trustee Michael J. Farrell, declare that on July 22, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Chapter 13 Plan, Memorandum of Facts and Law, and proposed Order on the individuals listed below, in the manner described:

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

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

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

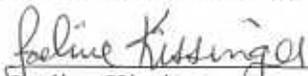
Henry Carl Buchmeier
51 East Ken Rue Lane
Fairmont, MN 56031

Darlene Lucille Buchmeier
51 East Ken Rue Lane
Fairmont, MN 56031

Stephen J. Behm
115 East Hickory Street, Ste. 200
P.O. Box 1056
Mankato, MN 56002-1056

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

Executed: July 22, 2004


Joeline Kissinger

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY 04-31943

Henry Carl Buchmeier
Darlene Lucille Buchmeier,

Chapter 13 Case

Debtors.

ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN

At St. Paul, MN, August 12, 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:

1. Confirmation of the debtors' proposed Chapter 13 plan dated June 10, 2004 is DENIED.

Dennis D. O'Brien
United States Bankruptcy Judge