

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY 04-32810 GFK

*Kenneth L. Knoll and
Susan M. Knoll,*

Chapter 13 Case

Debtors.

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

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 May 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' proposed Chapter 13 plan filed May 10, 2004 (the "Plan") and for dismissal of the Chapter 13 case.

6. At filing, the Debtors claimed exemptions in personal property on Schedule C valued at \$13,456. Based upon the valuation of the Debtors' homestead at

\$157,100 as indicated by Dakota County, which was unchallenged by the Debtors at the creditors' meeting, and adjusting for the amount used under 11 U.S.C. § 522(d)(1), the Debtors remaining available exemption under 11 U.S.C. § 522(d)(5) is no more than \$5,260. As such, their claimed exemption exceeds the allowable amount by \$8,196.

7. The Debtors propose to pay \$500 per month for 60 months to the Trustee, for a total of \$30,000 ("Plan Funds"). Adjusting for the 6% Trustee's fee, the Debtors propose to distribute the Plan Funds as follows:

Attorney fees	\$ 1,035.00
Trustee fees	1,698.11 (6.0%)
Dakota County-Priority Claim	1,257.20
Ameriquest	4,107.69
DaimlerChrysler Services ("DCS")	16,775.00
Unsecured Creditors	5,127.00

8. The case has been continued from month to month to resolve an objection filed on behalf of DCS and to address the Trustee's concerns regarding the return to unsecured creditors.

9. On June 18, 2004, the Debtors filed a Notice of Hearing on a modified plan.

10. On June 22, 2004, a Clerk's Note was filed, indicating that a modified plan would be filed separately from the Notice of Hearing.

11. As of the date of this Objection, no modified plan has been filed.

12. Based upon the foregoing, the Plan as proposed does not appear to meet the "best interest" test of 11 U.S.C. § 1325(a)(4). The bar date for filing of general unsecured claims has not expired. As such, the amount of timely filed general unsecured claims is undetermined as of the date of this objection. The Trustee objects to confirmation based upon the Debtors' failure to show 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 greater than the amount that would be paid on such claim if the estate of the Debtors was liquidated under Chapter 7 of Title 11 on such date.

13. At filing, the Debtors estimated their total nonpriority unsecured claims at \$32,830.72. Therefore, the proposed distribution to unsecured creditors amounts to approximately 16% of their claims.

14. The case has now been continued for two months in order to resolve the objection of DCS and for the Debtors to modify their plan to provide for an additional return to unsecured creditors, or, in the alternative, to provide additional information to the Trustee in support of their homestead valuation. Such delay is prejudicial to the interests of creditors, and justifies dismissal of the case under 11 U.S.C. § 1307(c).

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

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, that the Chapter 13 case be dismissed, and such other relief as may be just and equitable.

Jasmine Z. Keller, Trustee

Dated: August 17, 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: August 17, 2004

/e/ Margaret H. Culp

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

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Debtors.

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

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

I. Best interest of creditors.

The Code requires that creditors receive more from distribution of payments under a Chapter 13 plan than they would receive in liquidation under Chapter 7 of Title 11. *11 U.S.C. § 1325(a)(4)*. To do otherwise upsets the equitable balance of interest as between debtors and creditors. If creditors are required to forebear from collection efforts over a significant period of time, while receiving deferred cash payments, the code mandates that they receive a greater distribution than they would receive in a relatively short time through liquidation of a debtor's assets and distribution of their value by a Chapter 7 Trustee.

In this case, through analysis of the Debtors' current schedules, it is not clear that creditors will receive more through payments under the plan as proposed than they would receive if the Debtors' assets were liquidated in Chapter 7. Confirmation of the Plan should be denied.

II. Delay Prejudicial to Creditors

The Chapter 13 process for consumer debtors is designed to provide a speedy resolution to financial difficulties, while ensuring that creditors begin to receive distribution in an appropriate amount and in a reasonable amount of time. In this case, a two-month delay in resolving the dispute between the Debtors and DCS appears

unreasonable. No modified plan has been filed with the Court to satisfy the concerns of the objecting creditor or the Trustee. The record is devoid of evidence to justify the continuing delay in filing and serving a modified plan in response to the creditor's objection. Due to the delay in filing and serving a modified plan, no distributions have been made to any creditor, and it appears uncertain when or if a modified plan is forthcoming. Accordingly, cause exists to dismiss the case based upon delay pursuant to 11 U.S.C. § 1307(c).

CONCLUSION

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

Dated: August 17, 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

UNITED STATES BANKRUPTCY COURT
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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 17, 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

Barbara N. Nevin, Esq.
952-920-6869

By first class U.S. mail:

Kenneth L. Knoll
Susan M. Knoll
1119 145th Street East
Burnsville, MN 55337

Barbara N. Nevin, Esq.
Milavetz, Gallop, & Milavetz, P.A.
6500 France Avenue South
Edina, MN 55435
Attorneys for Debtors

Marilyn J. Washburn, Esq.
Riezman Berger, P.C.
7700 Bonhomme, 7th Floor
St. Louis, MO 63105
Attorneys for DaimlerChrysler Services North America, L.L.C.

Adam J. Bass, Esq.
Jeffrey K. Garfinkle, Esq.
Buchalter, Nemer, Fields & Younger
18400 Von Karman Avenue, Suite 800
Irvine, CA 92612
Attorneys for Ameriquest Mortgage Company

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

Executed: August 17, 2004

/e/ Margaret H. Culp

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

*Kenneth L. Knoll and
Susan M. Knoll,*

Debtors.

BKY 04-332810 GFK

Chapter 13 Case

**ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN AND
DISMISSING CHAPTER 13 CASE**

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 and Motion to Dismiss.

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 Debtor's proposed Chapter 13 plan filed May 10, 2004 is **DENIED**.
2. The Chapter 13 case is **DISMISSED**.

Gregory F. Kishel
Chief United States Bankruptcy Judge