

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Paul T. Black
SSN XXX-XX-7710

Debtor.

CASE NO. 04-33038 DDO

CHAPTER 13 CASE

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

TO: Debtor and other entities specified in Local Rule 3015-3.

1. Fairbanks Capital Corporation (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on July 15, 2004, before the Honorable Dennis D. O'Brien in Courtroom 228A at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on July 14, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than July 12, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed May 20, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.
6. Debtor is indebted to Secured Creditor in the principal amount of \$134,351.88, as evidenced by that certain Promissory Note dated May 16, 2001, together with interest thereon.
7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated May 16, 2001, executed by Paul T. Black, a single person, recorded April 11, 2002, as Document No. 1883328, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".
8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).
9. Said plan is also objected to on the basis that Debtor is delinquent in his pre-petition monthly mortgage payments to Secured Creditor for the months of January, 2004 through May, 2004, in the total amount of \$6,289.52, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 34 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).
10. The value of the property as scheduled by Debtor is \$240,000.00 subject to Secured Creditor's mortgage in excess of \$140,128.60. The property is also subject to other Secured Creditor's mortgages in favor of Homeq in excess of \$34,264.00 and in favor of Beneficial Finance in excess of \$29,205.00 as scheduled by Debtor.
11. The plan, as proposed, is not made in good faith by Debtor.

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 30th day of June, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

1883328

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2002 APR 11 A 9 14

DOC. NO. **1883328**
JOEL T. BECKMAN, COUNTY RECORDER

BY: *DF* Deputy

FEE *25.00* SURCHARGE *5.00*

CASH CHECK ESCROW

WELL CHARGE

CHARGE TO: _____

OR _____

DO NOT REMOVE

Paul T. Black Estate
Johnston, Iowa

DAKOTA COUNTY RECORDER-AUDITOR
6476/2002 11-24-02 633825
RECORDATION TAX 216.44
CURRENT CONSERVATION FEE 5.00
RECEIPT NUMBER 31029

1883328

MORTGAGE

NATIONS TITLE AGENCY INC.
9415 NALL AVE
SHAWNEE, MISSOURI, KS 66207
(816) 383-9461

1883328-02

-After Recording Return To:
HEARTHSIDE LENDING CORP.
CORPORATE HILLS NORTH 4770 NORTH
BELLEVIEW SUITE 100
GLADSTONE, MISSOURI 64116
Loan Number 01-29149

Return
Return To:
NATIONAL REAL ESTATE INFORMATION SERVICES
1801 EAST 79TH STREET, STE 4
BLOOMINGTON, MN 55425

018505288

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated MAY 16, 2001 together with all Riders to this document.
- (B) "Borrower" is PAUL T. BLACK A SINGLE PERSON

Borrower is the mortgagor under this Security Instrument.

- (C) "Lender" is HEARTHSIDE LENDING CORP.

Lender is a CORPORATION organized and existing under the laws of KANSAS

Lender's address is CORPORATE HILLS NORTH 4770 NORTH BELLEVIEW, SUITE 100, GLADSTONE, MISSOURI 64116

Lender is the mortgagee under this Security Instrument.

- (D) "Note" means the promissory note signed by Borrower and dated MAY 16, 2001.

The Note states that Borrower owes Lender ONE HUNDRED THIRTY SEVEN THOUSAND SIX HUNDRED AND 00/100 Dollars (U.S. \$ 137,600.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2016

- (E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

- (F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

- (G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

MIN0241.MTG

RECEIVED
MAR 25 2002
DAKOTA COUNTY
TREASURER-AUDITOR

EXHIBIT *A*

PDB

- Adjustable Rate Rider
- Balloon Rider
- 1-4 Family Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- Other(s) (specify) Prepayment Rider

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the

COUNTY of DAKOTA
(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)
 LOT 59, BLOCK 2, DONNAY'S VALLEY PARK, DAKOTA COUNTY, MINNESOTA,
 ACCORDING TO THE RECORDED PLAT THEREOF. ABSTRACT PROPERTY

P.D.B

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Paul T. Black
SSN XXX-XX-7710

Debtor.

CASE NO. 04-33038 DDO

This Chapter 13 Case came on before the Court on July 15, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed May 20, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Paul T. Black
SSN XXX-XX-7710

CHAPTER 13 CASE

CASE NO. 04-33038 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on June 30, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Paul T. Black
16318 Germane Court
Rosemount, MN 55068

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Robert J. Hoglund
PO Box 130938
Roseville, MN 55113

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

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

Dated this 30th day of June, 2004.

/e/ Diana Waletzko
Diana Waletzko