

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CASE NO. 04-33707 GFK

Randy L. Scott
SSN XXX-XX-4329
Jody L. Scott
SSN XXX-XX-9079

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

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

1. GMAC Mortgage 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 10:00 a.m. on September 23, 2004, before the Honorable Gregory F. Kishel in Courtroom 228B 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 10:00 a.m. on September 22, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than September 20, 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 June 23, 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 \$43,597.78, as evidenced by that certain Promissory Note dated October 14, 1998, 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 October 14, 1998, executed by Randy L. Scott and Jody L. Scott, Husband and Wife, recorded November 3, 1998, as Document No. 338482, 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 their pre-petition monthly mortgage payments to Secured Creditor for the months of November, 2001 through June, 2004, in the total amount of \$15,309.93, 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 (Bkrcty.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 54 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 \$25,000.00 subject to Secured Creditor's mortgage in excess of \$59,917.09.

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 14th day of July, 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.

No. 24190 Date 11-3-98

Registration Tax hereon of \$ 102.12 Paid
Robert J. Hagenburger
County Auditor/Treasurer

BAS
Tracted
338482 Office of County Recorder
County of Martin, Minnesota
I hereby certify that the within instrument was filed in this
office for record on the 3rd day of Nov.
A.D. 19 98 at 3:30 o'clock P. M and
was duly recorded as Document No. 338482
Kay Wronke
County Recorder
By Mary [Signature] Deputy

After recording return to:
The Money Store/Packaging
P.O. Box 160128
Sacramento, CA 95816-0128

0083436097

NORTH STAR EQUITY
BOX 249 595468

MORTGAGE

THIS MORTGAGE ("Security Instrument") is made this October 14, 1998
between the Mortgagor, Randy L. Scott And Jody L. Scott, Husband And Wife.

whose address is 401 East Main Street, Ceylon, MN 56121-0000

(herein "Borrower"), and the Mortgagee, TMS Mortgage Inc.
which is organized and existing under the laws of State of New Jersey
and whose address is 7401 Metro Blvd Suite 310, Edina, MN
55439 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of Forty-Four Thousand, Four
Hundred and 00/100 Dollars (U.S. \$ 44,400.00)
together with interest, which indebtedness is evidenced by Borrower's note dated October 14, 1998
(the "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner
paid, due and payable on November 1, 2028

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; extensions,
modifications and renewals of the Note; the payment of all other sums, with interest thereon, advanced in accordance with this
Security Instrument to protect the security of this Security Instrument; and the performance of the covenants and agreements
of Borrower contained in this Mortgage, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the



EXHIBIT A

following described property located in Martin
(SEE EXHIBIT 'A' ATTACHED)

County, Minnesota:

being the same property commonly known as: 401 East Main Street, Ceylon, MN 56121-0000
(Property Address").

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Security Instrument. All of the foregoing, together with such property (or the leasehold estate if this Security Instrument is on a leasehold) are called the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and covenants that Borrower will defend generally the title to the Property against all claims and demands, subject to encumbrances of record. Borrower further warrants, represents and covenants as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest (including and all other charges evidenced by the Note.

2. **Funds for Taxes and Insurance.** If required by Lender, and subject to applicable law, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; and (e) yearly mortgage insurance premiums, if any. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

As used in this Paragraph 21, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 21, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release the Security Instrument. Borrower shall pay any release fees and costs of recordation unless applicable law provides otherwise.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

Adjustable Rate Mortgage Loan Rider attached hereto and incorporated herein by this reference.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Randy L. Scott (Seal)
Randy L. Scott -Borrower
_____-Borrower (Seal)

Jody L. Scott (Seal)
Jody L. Scott -Borrower
_____-Borrower (Seal)

STATE OF MINNESOTA,

County ss: Martin

On this 14th day of October

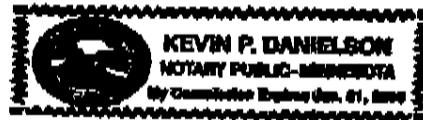
, 1998, before me appeared Randy L. Scott & Jody L. Scott Husband & Wife

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that executed the same as free act and deed.

Kevin P. Danielson
Notary Public
My Commission Expires: 1-31-2000

This instrument was prepared by:

Signature Closing Services
2059 122nd Avenue N W, Coon Rapids, MN 55448
(612) 767-7446



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Randy L. Scott
SSN XXX-XX-4329
Jody L. Scott
SSN XXX-XX-9079

CASE NO. 04-33707 GFK

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 July 14, 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:

Randy L. Scott
Jody L. Scott
RR1 Box 1B
Ceylon, MN 56121

Michael J. Farrell
PO Box 519
Barnesville, MN 56514

Ian Traquair Ball
12 South 6th Street, Suite 326
Minneapolis, MN 55402

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 14th day of July, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Randy L. Scott
SSN XXX-XX-4329
Jody L. Scott
SSN XXX-XX-9079

Debtor.

CASE NO. 04-33707 GFK

This Chapter 13 Case came on before the Court on September 23, 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 June 23, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court