
In Re:
Tamara J Worden,
Debtor,

Case No. 04-33853
Chapter 13 Case

**OBJECTION BY FORD MOTOR CREDIT COMPANY
TO CONFIRMATION OF CHAPTER 13 PLAN WITH MEMORANDUM
AND REQUEST FOR DISMISSAL**

TO: Debtor(s) and other entities specified in Local Rule 9013-3.

1. Ford Motor Credit Company, (the "Respondent") is the holder of a claim in the above case, and, by its undersigned attorney, objects to confirmation of the proposed Chapter 13 Plan.
2. The petition commencing this Chapter 13 case was filed on June 30, 2004. The Debtor(s) have filed a Chapter 13 Plan scheduled for confirmation hearing on August 12, 2004 at 10:30 AM.
3. This objection arises under 11 U.S.C. §1324 and Fed. R. Bankr. P. 3015, and is filed under Fed. R. Bankr. P. 9014 and Local Rules 3015-3, 9013-2, 9013-3. Respondent objects to confirmation of the proposed Plan and requests an order denying confirmation of the proposed Plan.
4. Respondent is the holder of a claim, and is thus a party in interest.
5. The balance outstanding on the debt owed to Respondent by Debtor(s) is \$12,722.26.
6. Respondent holds a perfected security interest in a 2002 FORD MUSTANG V6 (the collateral). Copies of the Lien Card or the UCC-1 Financing Statement and of Respondent's Contract evidencing the underlying transaction are attached as Exhibits "A" and "B" respectively. The Debtor has informed Respondent she sold the collateral to a 3rd party without Respondent's knowledge or consent. The present market value of the collateral on or about June 30, 2004 was \$11,450.00. Debtor's plan has no provision for treatment of Respondent's secured claim.

7. The Plan proposes that Debtor(s): (1) pay the Chapter 13 Trustee \$ 150 per month and (2) appears to include Respondent's secured claim in the general unsecured nonpriority claims which the Plan presently estimates will be paid about 3 cents on the dollar.
8. The Plan is objected to on the following grounds
 - a. Good Faith. That the Plan has not been proposed in good faith in violation of §1325(a)(3).

Under §1325(a)(3), the court cannot confirm a Chapter 13 plan that is not filed in good faith. In the 8th Circuit, good faith is determined by considering the totality of circumstances. In re LeMaire, 898 F.2d 1346 (8th Cir.1990). See also, In re Estus, 695 F.2d 311 (8th Cir.1982) and Education Assistance Corp. v. Zellner, 827 F.2d 1222 (8th Cir.1987).

Three factors are considered in determining whether a plan was proposed in good faith: (1) whether the Debtor accurately stated his expenses and debts; (2) whether the Debtor made a fraudulent misrepresentation to the Bankruptcy Court; and (3) whether the Debtor unfairly manipulated the Bankruptcy Code. Bayer v. Hill, 210 B.R. 794, 796 (8th Cir. BAP August 12, 1997). Other factors may also be considered, such as: the nature of the debts sought to be discharged, including their dischargeability under Chapter 7, and the debtor's reasons for seeking Chapter 13 relief. See In re Reynold and Patricia Mattson, 241 B.R. 629 (Bkrcty. Minn. 1999) (No. 99-42865, Nov. 30, 1999). "The bottom line for most courts, even those outside of this circuit, is whether the debtor is attempting to thwart his creditors or is making an honest attempt to repay them." Mattson, supra, page 637.

Debtor sold Respondent's collateral to a 3rd party without paying the debt secured by the collateral. Debtor now attempts to effectively strip Respondent of its lien rights through this plan by paying only pennies on the dollar. Debtor did not apply any sales proceeds to the debt.

Debtor(s)' Schedules I and J show the following unnecessary expenses and/or luxury goods/services being retained:

\$80.00 for telephone (amount too high for reasonable telephone costs - standard phone costs are about \$30.00 per month)
\$50.00 for cable and internet

\$130.00 for medical expenses although schedules do not indicate the Debtor or her daughter has any medical treatment or condition justifying that amount per month
\$78.00 for Recreation, clubs, etc.
Debtor maintains a boat, motor and trailer listed in her Schedule B although such maintenance costs appear to be “buried” in the “Other” or “Transportation” expense categories.

A Debtor(s)' proposal to retain luxury goods while proposing to pay unsecured creditors only a percentage of their claims is indicative of a lack of good faith. In re Nkanang, 44 B.R. 955, 956 (Bkrcty.N.D.Ga. 1984), In re Porter, 102 B.R. 773 (9th Cir. B.A.P. 1989).

Allocating plan payments and disposable income toward loans and maintenance costs of non-essential assets while also proposing to defer, reduce, or even deny a return to other creditors, raises serious good faith questions. "In such a case, the Debtor proposes to build up equity in assets which the legislature has not found essential to a fresh start; more crucially, the Debtor proposes to correspondingly defer, reduce, or even deny a return to other creditors on their prior claims, by diverting estate resources to nonessential purposes... Such a plan grants a windfall to the Debtor, enriching him at creditors' expense to the extent of the equity accumulated post-petition." In re Cordes, 147 B.R. 498, 505 (Bkrcty.D.Minn. 1992).

A Debtor(s)' proposal to maintain a high standard of living while proposing to pay unsecured creditors only a percentage of their claims is further indicative of a lack of good faith and "while the Court readily concedes that the function of the provisions under Chapter 13 of the act is not designed to condemn a Debtor(s) to a state of poverty, the Court also recognizes that the act was not designed to thrust a Debtor into a state of luxury to the detriment of his creditors." In re Jenkins, 20 B.R. 642, 643 (Ark. 1982). The burden is on the Chapter 13 Debtor(s) to establish good faith in the filing of a debt adjustment plan once that good faith is questioned. In re Belt, 106 B.R. 553 (Bkrcty.N.D.Ind. 1989), §1325(a)(3).

b. Disposable Income. That the Plan does not provide that all of the Debtor(s)' projected disposable income to be received in the first 36 months of the Plan will be applied to make Plan payments as required under §1325(b)(1)(B).

Debtor(s) in Chapter 13 Bankruptcy must include all "disposable income" in their payments to the Chapter 13 Trustee. In re McDaniel, 126 B.R. 782, 784 (Bkrcty.D.Minn. 1991), §1325(b)(1)(B).

"Disposable income" is defined as that which is not "reasonably necessary" to be expended by the Debtor(s). The court must balance the interests of creditors against the interests of the Debtor(s) to determine the manner in which they should maintain and support themselves. Id. at 784. "But Debtors in Chapter 13 cases are not entitled to maintain their former lifestyles and statuses in society at the expense of their creditors." Id. at 784. The Schedules indicate additional disposable income of about \$278 per month is available for Plan use.

In considering whether all of Debtor(s)' disposable income is going into the plan, the Court applies a "best efforts" test. In re Sitarz, 150 B.R. 710 (Bkrcty.D.Minn.1993). Failure of the Debtor(s) to pass the "best efforts" test and to submit all disposable income during the first 36 months also constitutes a lack of good faith under §1325(a)(3). In re Cordes, 147 B.R. 498 (Bkrcty.D.Minn.1992).

- c. Dismissal of Case. On request of a party in interest, the court may dismiss a case for cause, under Chapter 13. 11 U.S.C. §1307(c).

The Debtor has failed to propose a confirmable plan. Such failure causes unreasonable delay prejudicial to all creditors. Debtor has the exclusive right and obligation to propose a Chapter 13 plan. 11 U.S.C. §1321. The Debtor thus has the burden of proposing a plan that is fair and that complies with the requirements of the Bankruptcy Code. Debtor has failed to timely file a plan that meets those standards. Such constitutes cause as set out in §1307 (c) (1) and (3).

This objection provides the Debtor with the necessary information as to what modifications must be made to the proposed plan to obtain confirmation.

WHEREFORE, Ford Motor Credit Company requests the court deny confirmation of the

proposed plan, and grant dismissal of the case, and such other relief as may be just and equitable.

Dated: August 2, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

MINNESOTA DEPARTMENT OF PUBL
DRIVER & VEHICLE SERVICES DIVIS
445 MINNESOTA ST., ST. PAUL, MN 5
CONFIRMATION OF LIEN PERFECTION - D.

WORDEN TAMARA JO
8 LEE ST
FOREST LAKE MN 55025

Permit No. 171
St. Paul, MN

*

JFU539

1ST SECURED PARTY

LIEN HOLDER

02 Year	FORD Make	CPMUS Model	J1570P214 Title NR.
1FAFP40462F157487 VIN		05/07/02 Security Date	NO Rebuilt

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

FORD MOTOR CREDIT CO
PO BOX 105704
ATLANTA GA 30348-5704

EXHIBIT
A

Buyer (and Co-Buyer) Name and Address (Including County and Zip Code) FAHARA JO WORDEN 8 LEE STREET FOREST LAKE, WASHINGTON, MN 55025	CREDITOR (Seller Name and Address) TOUSLEY FORD INC. 1493 COUNTY RD E EAST WHITE BEAR LK, MN 55110
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. The cash price is shown below as "Cash Price." The credit price is shown below as "Total Sale Price." By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract.

New/Used	Year and Make	Model	GVW if Truck (lbs.)	Vehicle Identification Number	Use For Which Purchased
NEW	2002 FORD	MUSTANG		1FAFP40462F157487	<input checked="" type="checkbox"/> Personal <input type="checkbox"/> Agricultural <input type="checkbox"/> Commercial

Trade-in _____ \$ _____ N/A \$ _____ N/A
Year and Make Gross Allowance Amount Owning

ITEMIZATION OF AMOUNT FINANCED

- Cash Price \$ 17960.68 (1)
- Down Payment
 Manufacturer's Rebate Assigned to Creditor \$ 500.00
 Cash Down Payment \$ 2000.00
 Trade-in (description above) \$ N/A
 Total Down Payment \$ 2500.00 (2)
- Unpaid Balance of Cash Price (1 minus 2) \$ 15460.68 (3)
- Amounts Paid On Your Behalf (Seller may be retaining a portion of these amounts)
 To Public Officials
 (i) for license, title & registration fees \$ 252.00 ;
 (ii) for filing fees \$ 2.00 ;
 (iii) for taxes (not in Cash Price) \$ N/A
 Total \$ 254.00
 To Insurance Companies for:
 Credit Life Insurance \$ N/A
 Credit Disability Insurance \$ N/A
 TOUSLEY FORD INC for TOUSLEY FORD FEES \$ 25.00
 To _____ for _____ \$ N/A
 To _____ for _____ \$ N/A
 To _____ for _____ \$ N/A
 Total \$ 279.00 (4)
- Amount Financed (3 plus 4) \$ 15739.68 (5)

INSURANCE
YOU MAY OBTAIN VEHICLE INSURANCE FROM A PERSON OF YOUR CHOICE.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE, CREDIT DISABILITY AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.

Credit Life NA
Insurer _____
\$ N/A Premium Insured(s) _____
Signature(s) _____

Disability NA
Insurer _____
\$ N/A Premium Insured _____
Signature _____

Type of Insurance _____ Term _____
Insurer _____ \$ N/A Premium _____
Signature _____

Credit Life and Credit Disability Insurance are for the term of the contract. The amount and coverages are shown in a notice or agreement given to you today.

You are required to insure the vehicle. If a charge is shown below, the Creditor will try to buy the coverages checked for the term shown. Coverages will be based on the cash value of the vehicle at the time of loss, but not more than the limits of the policy.

- Comprehensive \$ N/A Deductible Collision
- Fire-Theft-Combined Additional Coverage
- Towing and Labor
- Term _____ Months (Estimate)
Premium \$ N/A

EXHIBIT B

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate 11.90%	The dollar amount the credit will cost you \$ 5219.52	The amount of credit provided to you or on your behalf \$ 15739.68	The amount you will have paid when you have made all scheduled payments \$ 20359.20	The total cost of your purchase on credit, including your downpayment of \$ 2500.00 \$ 22459.20

Payment Schedule	Number of payments	Amount of Each payment	When Payments are due
Your payment schedule will be:	59	\$ 349.32	monthly starting
	1 final	\$ 349.32	06 JUN 2002

Prepayment: If you pay off your debt early, you will not have to pay a penalty.
Security Interest: You are giving a security interest in the vehicle being purchased.
Contract: Please see this contract for additional information on security interest, nonpayment, default, the right to require repayment of your debt in full before the scheduled date, and prepayment penalty.

COMMERCIAL OR AGRICULTURAL USE CONTRACTS: If you purchased the vehicle for commercial or agricultural use, you must pay a late charge on the portion of each payment received more than 10 days late of 7.5 percent of the late amount or \$50.00, whichever is less.

Any change in this contract must be in writing and signed by you and the Creditor.

BUYER: Yamie Worden CO-BUYER: _____

NOTICE TO BUYER

Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign.

You acknowledge receipt of a true and completely filled in copy of this contract, signed by both yourself and the seller, at the time of signing.

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

Yamie Worden Buyer Signs _____ (Co) Buyer Signs

By signing below, the Seller accepts this contract. If no other Assignee is named in a separate assignment attached to this contract, the Seller assigns it to Ford Motor Credit Company.

Seller TOUSLEY FORD INC. BY BEERE Title _____

QUESTIONS?



PLEASE CALL US AT 1-800-727-7000 00-001

ORIGINAL

ADDITIONAL AGREEMENTS

A. Payments: You must make all payments when they are due. You may prepay your debt at any time without penalty. This is a simple interest contract. The actual finance charge you agree to pay will depend on your payment patterns. The actual finance charge may exceed the disclosed Finance Charge if you make your payments later than the scheduled dates or in less than the scheduled amount. Your payment will be applied first to the earned and unpaid part of the Finance Charge and then to the unpaid Amount Financed. The Finance Charge is earned by applying the Annual Percentage Rate to the unpaid Amount Financed for the actual time that the unpaid Amount Financed is outstanding.

B. Security Interest: You give the Creditor a security interest in:

1. The vehicle and all parts or other goods put on the vehicle;
2. All money or goods received for the vehicle; and
3. All insurance premiums and service contracts financed for you.

This secures payment of all amounts you owe under this contract. It also secures your other agreements in this contract.

C. Use of Vehicle — Warranties: You must take care of the vehicle and obey all laws in using it. You may not sell or rent the vehicle, and you must keep it free from the claims of others. You will not use or permit the use of the vehicle outside of the United States, except for up to 30 days in Canada or Mexico, without the prior written consent of the Creditor. If the vehicle is of a type normally used for personal use and the Creditor, or the vehicle's manufacturer, extends a written warranty or service contract covering the vehicle within 90 days from the date of this contract, you get implied warranties of merchantability and fitness for a particular purpose covering the vehicle. Otherwise, you understand and agree that there are no such implied warranties.

D. Insurance: You must insure yourself and the Creditor against loss or damage to the vehicle. The type and amount of insurance must be approved by the Creditor. If the Creditor obtains a refund on insurance or service contracts, the Creditor will subtract the refund from what you owe. Whether or not the vehicle is insured, you must pay for it if it is lost, damaged, or destroyed.

If a charge for vehicle insurance is shown on the front of the Creditor will try to buy the coverages checked for the term shown. The Creditor is not liable, though, if he cannot do so. If these coverages cost more than the amount shown for insurance, the Creditor may buy them for a shorter term or he may give you credit for the amount shown. If he cannot buy any insurance, he will give you credit for the amount shown. The credit will be made to the last payments due.

E. Late Payments: You must pay any cost paid by the Creditor to collect any late payment, as allowed by law. Acceptance of a late payment does not excuse your default or mean that you can keep making payments after they are due. The Creditor may take the steps set forth below if there is any default.

F. Default: You will be in default if:

1. You do not make a payment when it is due; or
2. You gave false or misleading information on your credit application relating to this contract; or
3. Your vehicle is seized by any local, state, or federal authority and is not promptly and unconditionally returned to you; or
4. You file a bankruptcy petition or one if filed against you; or
5. You do not keep any other promise in this contract.

If you default, the Creditor may require you to pay at once the unpaid Amount Financed, the earned and unpaid part of the Finance Charge, and all other amounts due under this contract. He may repossess (take back) the vehicle, too. He may also take goods found in the vehicle when repossessed and hold them for you.

If the vehicle is taken back, he will send you a notice. The notice will say that you may redeem (buy back) the vehicle. It will also show the amount needed to redeem. You may redeem the vehicle up to the time the Creditor sells it or agrees to sell it. If you do not redeem the vehicle, it will be sold.

The money from the sale, less allowed expenses, will be used to pay the amount still owed on this contract. Allowed expenses include those paid as a direct result of having to retake the vehicle, hold it, prepare it for sale, and sell it. You must also pay attorney fees not to exceed 15% of the amount due and payable under the contract, and court costs payable by Ford Credit to obtain, hold, and sell the vehicle, collect amounts due and enforce Holder's rights under the contract. If there is any money left (a surplus), it will be paid to you. If the money from the sale is not enough to pay off this contract and costs, you will pay what is still owed to the Creditor, if allowed by law. If you do not pay this amount when the Creditor asks, the Creditor may charge you interest at the highest lawful rate until you pay.

G. General: To contact Ford Motor Credit Company about this account, call 1-(800) 727-7000. Any change in this contract must be in writing and signed by you and the Creditor. The law of Minnesota applies to this contract. If that law does not allow all the agreements in this contract, the ones that are not allowed will be void. The rest of this contract will still be good.

FTC NOTICES

NOTICE — ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.*

Used Motor Vehicle Buyers Guide. If you are buying a used vehicle with this contract, federal regulations may require a special Buyers Guide to be displayed on the window of the vehicle. THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

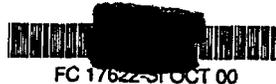
*Does not apply if purchased for commercial or agricultural use. In that case, you (debtor) will not assert against any assignee or subsequent holder of this Contract any claims, defenses, or setoffs which you may have against the Seller or manufacturer of the vehicle.

GUARANTY

To cause the Seller to sell the vehicle described on the front of this contract to the Buyer, on credit, each person who signs below as a "Guarantor" guarantees the payment of this contract. This means that if the Buyer fails to pay any money that is owed on this contract, each one who signs as a guarantor will pay it when asked. Each person who signs below agrees that he will be liable for the whole amount owed even if one or more other persons also signs this Guaranty. He also agrees to be liable even if the Creditor does one or more of the following: (a) gives the Buyer more time to pay one or more payments, or (b) gives a release in full or in part to any of the other Guarantors, or (c) releases any security. Each Guarantor also states that he has received a completed copy of this contract and this Guaranty at the time of signing.

Guarantor _____ Address _____

Guarantor _____ Address _____



04-02832-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Tamara J Worden,

Debtor,

Case No. 04-33853
Chapter 13 Case

VERIFICATION FOR CONFIRMATION OBJECTION

I, Carolyn Boynton, the Designated Agent for Ford Motor Credit Company, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account number(s) 30831606.
2. The Debtor owes the Creditor \$12,722.26, payoff amount as of July 6, 2004, plus accrued unpaid interest thereon since that date. The monthly loan payment is \$349.32. As of July 6, 2004, the loan payments are in arrears \$1,041.90 for payments owing since May 6, 2004.
3. The debt owed to the Creditor is secured by a perfected lien on a 2002 FORD MUSTANG V6. The current NADA published retail value of the collateral is \$11,450.00.
4. Debtor has informed Creditor that the collateral was sold to a third party in March 2003 and the plan provides for treatment of Creditor's claim as general unsecured non-priority included in Term 9.
5. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the loan documents are attached as Exhibit "B".

Dated:

August 2, 2004

Carolyn Boynton

Carolyn Boynton
Ford Motor Credit Company
National Bankruptcy Svc Center
P.O. Box 537901
Livonia, MI 48153-7901

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33853

Tamara J Worden,
Debtor,

Chapter 13 Case

UNSWORN DECLARATION OF PROOF OF SERVICE

I, Linda Jeanne Jungers, declare under penalty of perjury that on August 2, 2004, I mailed copies of the foregoing Objection to Confirmation of Plan with Memorandum, Verification, proposed Order, and Unsworn Declaration of Proof of Service, by first class mail, postage prepaid, to each entity named below at the address stated below for each entity.

Tamara J Worden
8 Lee Street
Forest Lake, MN 55025

Gregory J Wald
Attorney at Law
3601 Minnesota Dr, Suite 800
Edina, MN 55435

Jasmine Z. Keller
Chapter 13 Trustee
12 S. 6th St #310
Minneapolis, MN 55402

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

Executed on: August 2, 2004

Signed: /e/Linda Jeanne Jungers
Linda Jeanne Jungers
STEWART, ZLIMEN & JUNGERS
430 Oak Grove Street, #200
Minneapolis, MN 55403

04-02832-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33853

Tamara J Worden,

Chapter 13 Case

Debtor,

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

This Chapter 13 case came on before the Court on August 12, 2004 at 10:30 AM, for hearing on confirmation of a proposed Plan of individual debt adjustment. Linda Jeanne Jungers appeared on behalf of Ford Motor Credit Company. Other appearances were as noted in the record. Upon the record made at the hearing, and the other files, records, and proceedings in this case,

IT IS HEREBY ORDERED:

1. That confirmation of Debtor's Plan of debt adjustment is denied.
2. That the case is dismissed, for cause.

Dated:

BY THE COURT:

United States Bankruptcy Judge