

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

*Robert L. Carver and
Janet M. Carver,*

Debtors.

BKY 04-33931 DDO

Chapter 13

**NOTICE OF MOTION AND MOTION OBJECTING TO CONFIRMATION OF
CHAPTER 13 PLAN**

TO: All parties entitled to notice under Local rule 9013-3:

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), moves the court for the relief requested below and gives notice of hearing.

2. **NOTE: CONTESTED MATTERS ONLY THAT WERE ORIGINALLY SCHEDULED TO BE HEARD BEFORE JUDGE O'BRIEN ON SEPTEMBER 9, 2004 ARE CONTINUED FOR HEARING TO OCTOBER 14, 2004.** A hearing on this motion will be held before the Honorable Dennis D. O'Brien, Courtroom 228A, U. S. Courthouse, 316 North Robert Street, St. Paul, Minnesota at 10:30 a.m. on October 14, 2004, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on October 13, 2004, which is 24 hours (one business day) before the time set for the hearing, or filed and served by mail not later than October 8, 2004 (due to Columbus Day Holiday), 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. The Court has jurisdiction pursuant to 28 U.S.C. §157 and §1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on July 6, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §1307, 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 pertain. Movant requests relief with respect to denial of confirmation of the Debtors' proposed Chapter 13 Plan dated July 19, 2004 (the "Plan"). If testimony is necessary as to any facts relevant to this motion, the Trustee reserves the right to call an employee of the Chapter 13 Trustee, 310 Plymouth Building, Minneapolis, Minnesota, and/or the Debtor to present testimony.

6. The Plan calls for the Debtors to make payments to the Trustee of \$800

per month for 36 months, for a total of \$28,800 (the “Plan Funds”).

7. The Plan calls for the Plan Funds, net of the Trustee’s estimated fee in the amount of \$1,728.00, to be disbursed as follows:

<u>Claimant</u>	<u>Claim Amount</u>	<u>Claim Type</u>
Internal Revenue Service	\$ 3,510 (Est.)	Priority
Ramsey County	\$ 1,148	Priority
Household Finance Corp.	\$ 8,110	Secured
Household Auto Finance	\$ 9,000	Secured
Park Credit	\$3,464	Secured
General Unsecured Creditors	\$1,839.77	
TOTAL	\$28,800	

8. Ramsey County has filed Claim No. 2 in the amount of \$7,350.65 as a secured claim.

9. The Claim either has not been objected to or amended by the Claimant, and therefore is deemed allowed under 11 U.S.C. § 502(a). Paragraph 3 of the Plan provides that the Trustee shall pay priority claims in the amounts actually allowed. Paragraph 4 of the Plan provides that the Trustee will cure the actual amounts of any defaults. The requirements of 11 U.S.C. § 1322(a)(2) preclude confirmation of a plan unless it provides for full payment of all claims entitled to priority. The requirements of 11 U.S.C. § 1325(a)(5) with respect to allowed secured claims preclude confirmation. *11 U.S.C. § 1325(a)(5)(B)*.

10. The total amount of the priority claims to be paid by the Trustee is \$3,510. If Ramsey County is paid as a secured claim with interest as its Claim was filed, the total amount of secured claims to be paid by the Trustee is at least \$25,962.20.

11. Even after calculating the Trustee’s fee at \$1,630.19 (6%) and reducing the claim of Household Finance Corp. to \$6,147.32, there is a discrepancy between the net funds to be paid into the plan by the Debtors (**\$28,800**) and the funds needed to pay the allowed priority and secured claims in the amount necessary to pay these claims in full (**\$29,472.20**).

12. There is no indication that the Debtors will be able to increase payments to the Trustee to pay all allowed claims in the amount required to obtain a discharge under Section 1328 of the Bankruptcy Code.

13. As a result of the foregoing, the plan is no longer feasible.

14. The creditors, if any, of a class lower in priority than the class of the Claim(s) may never receive the distribution contemplated under the plan.

15. As a further result of the present circumstances, the lower priority creditors, if any, will be delayed from the collection of their claims during the pendency of this Chapter 13 case.

16. The effect of these circumstances is that the lower priority creditors, if any, will have detrimentally relied upon the confirmed plan with the expectation of future payment, only to discover at the end of the plan term that they will receive no payment.

WHEREFORE, the Movant requests entry of an order denying confirmation, and for such other relief as the Court deems just and proper.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: September 1, 2004

/e/ Margaret H. Culp
Thomas E. Johnson, #52000
Margaret H. Culp, #180609
Chapter 13 General Counsel
310 Plymouth Building
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Margaret H. Culp, for Movant, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: September 1, 2004

/e/ Margaret H. Culp

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MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION

FACTS

The Trustee relies upon the facts set forth in her verified motion, which, for the sake of brevity, will not be repeated here.

LEGAL DISCUSSION

One of the fundamental requirements for confirmation of a Chapter 13 plan is found in 11 U.S.C. § 1322(a)(1), which states that a plan shall “provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan.” *11 U.S.C. § 1322(a)(1)*. Essentially, this statute requires the debtor to propose a plan that is fully funded, in the sense that the debtor commits to making sufficient payments to pay all amounts required to be paid to creditors under the proposed plan.

Here, the Debtors have only committed to paying a total of \$28,800 to the Trustee, yet the total priority and secured claims filed to date or provided for in the Plan exceed that number, taking into consideration the fact that the total Plan Funds will be reduced by the Trustee’s statutory fee. The Plan is under-funded and therefore unconfirmable.

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

CONCLUSION

The Debtors’ Plan is not confirmable because it does not propose sufficient payments to fully fund it. Confirmation should be denied.

Respectfully submitted:

September 1, 2004

Signed: /e/ Margaret H. Culp
Thomas E. Johnson, ID #52000
Margaret H. Culp, ID #180609
Counsel for Chapter 13 Trustee
310 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402
(612) 338-7591

UNITED STATES BANKRUPTCY COURT
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Chapter 13

Debtors.

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 1, 2004, I served Trustee's Objection to Confirmation and Notice of Hearing and Motion on the individual(s) listed below, in the manner described:

By facsimile:

United States Trustee
612-664-5516

Craig W. Andresen, Esq.
952-835-1554

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

Robert L. Carver
Janet M. Carver
1355 Arden View Drive
Arden Hills, MN 55112

Craig W. Andresen, Esq.
2001 Killebrew Drive, Suite 330
Bloomington, MN 55425

Erich M. Ramsey, Esq.
The Ramsey Law Firm, P.C.
P.O. Box 201347
Arlington, TX 76006

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

Executed: September 1, 2004

/e/ Margaret H. Culp

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**ORDER SUSTAINING OBJECTION TO CONFIRMATION AND DISMISSING
CASE**

At St. Paul, Minnesota _____, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on Chapter 13 Trustee's Objection to Confirmation and Motion for dismissal or conversion of the Chapter 13 case.

Appearances were as noted in the minutes.

Upon the foregoing motion, the arguments of counsel, and all of the files, records and proceedings herein:

IT IS ORDERED:

1. The Trustee's Objection to Confirmation is **SUSTAINED**.
2. Confirmation of the Debtors' Plan dated July 19, 2004 is **DENIED**.

Dennis D. O'Brien
United States Bankruptcy Judge