

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CASE NO. 04-34127 GFK

Gary Thayne Beto
SSN XXX-XX-8932
Beverly Jean Beto
SSN XXX-XX-3095

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

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

1. The Chase Manhattan Bank, as Trustee under the Pooling and Servicing Agreement, dated as of August 1, 2001, among Credit-Based Asset Servicing and Securitization LLC, Residential Asset Funding Corporation, Litton Loan Servicing LP and The Chase Manhattan Bank, C-BASS Mortgage Loan Asset-Backed Certificates, Series 2001-BC3, c/o Litton Loan Servicing LP (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 October 28, 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 October 27, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than October 25, 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 July 15, 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 \$124,200.00, as evidenced by that certain Promissory Note dated September 1, 2000, 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 September 1, 2000, executed by Gary T. Beto and Beverly J. Beto, husband and wife, recorded September 11, 2000, as Document No. 400532, 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 the plan, as proposed by Debtor, does not provide for payment of the arrears based on the Proof of Claim filed by Secured Creditor.

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 January, 2004 through July, 2004, in the total amount of \$12,181.73, including late charges. 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, does not provide for payment of the arrears 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 \$151,100.00 subject to Secured Creditor's mortgage in excess of \$137,112.14. The property is also subject to a second mortgage in favor of Citi Financial Services, Inc. in excess of \$14,807.23 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 1st day of October, 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.

May. 6. 2004.4 7:48AM IOM-TUNIVERSAL TITLEACT

320-258-7518

No.9573P08P. 8/11-749

RECEIVED

Date: 9-11-2000

Treasurer's Receipt No. 63953

Russ Nyman
Morrison County Auditor

Carol Johnson
Morrison County Treasurer

OFFICE OF COUNTY RECORDER
MORRISON COUNTY, MINNESOTA

I HEREBY CERTIFY THAT THIS INSTRUMENT # 400532

WAS FILED/RECORDED IN THIS OFFICE FOR RECORD
ON THE 11 DAY OF September, A.D. 2000
AT 9 O'CLOCK P.M.

ELBA MAS (SUNNY) JOHNSTON, COUNTY RECORDER

BY *[Signature]*

FEE \$ 15.00 S.C. # 4 CHECK CASH P.P.

WELL OBT. SEPTIC OBT.

RECD. [Signature]

RETURN

This Instrument Was Drafted By:

First Union National Bank of Delaware
C/O Service Center
8740 Research Drive
Suite C
Charlotte, NC 28288-0087
Account Number: 185 005444881

When Recorded, Return To:

First Union National Bank of Delaware
C/O Service Center
8740 Research Drive
Suite C
Charlotte, NC 28288-0087
Parcel Number: 3-470

MORTGAGE

THIS MORTGAGE is made this day September 01, 2000, between the Mortgagor GARY T SETO, and SEVERLY J. SETO, HUSBAND AND WIFE, whose mailing address is the property address (herein "Borrower"), and the Mortgagee, First Union National Bank of Delaware, a national banking association organized and existing under the laws of the United States of America, whose address is One Rodney Square, 920 King Street, Wilmington, DE 19801 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$124,200.00, which indebtedness is evidenced by Borrower's Note dated September 01, 2000 and extensions, modifications and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on September 07, 2015;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of MORRISON, State of Minnesota:

SEE ATTACHED SCHEDULE A.

which has the address of 8878 HILLTON RD., ROYALTON, MN 56373 and Parcel No. 3-470 (herein "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 Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Any Rider ("Rider") attached hereto and executed of even date is incorporated herein and the covenant and agreements of the Rider shall amend and supplement the covenants and agreements of this Mortgage, as if the Rider were a part hereof.

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 covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note. This Mortgage secures payment of said Note according to its terms, which are incorporated herein by reference.

2. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations, under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may obtain a priority over this Mortgage, and leasehold payments or ground rents, if any.

Commission Title 923T

65

EXHIBIT A

May. 6. 2004 7:48AM 7-UNIVERSAL TITLE 3ACT 320-258-7518

No. 9573P05P. 9/11-749

400532

SCHEDULE A

All that part of the North 1/2 of the Northwest 1/4 of Section 28, Township 39, Range 37, Morrison County, Minnesota, lying Easterly of the centerline of a Township Road and Southerly of the following described line:

Commencing at the Northeast corner of the Northwest 1/4 of Section 28; thence South 01 degree 21 minutes 01 seconds West along the East line thereof 496 feet to the point of beginning of the line to be described; thence North 88 degrees 23 minutes 23 seconds West 1008.71 feet to said centerline of Township Road and there terminating.

Note: The subject property is Abstract land, and is located in Morrison County, Minnesota.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Gary Thayne Beto
SSN XXX-XX-8932
Beverly Jean Beto
SSN XXX-XX-3095

CASE NO. 04-34127 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 October 1, 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:

Gary T. Beto
Beverly J. Beto
6078 Hillton Rd
Royalton, MN 56373

Michael J. Farrell
PO Box 519
Barnesville, MN 56514

Stephen L. Heller
606 25th Ave S Ste 110
St. Cloud, MN 56301

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 1st day of October, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Gary Thayne Beto
SSN XXX-XX-8932
Beverly Jean Beto
SSN XXX-XX-3095

Debtor.

CASE NO. 04-34127 GFK

This Chapter 13 Case came on before the Court on October 28, 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 September 22, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court