

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Case No.: 04-34207

*William Dale Schultz and
Karen Lynn Schultz*

Chapter 13 Case

Debtors.

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

TO: All parties in interest pursuant to Local Rule 9013-3.

1. Michael J. Farrell, Chapter 13 Trustee (the "Trustee"), moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 10:00 a.m. on September 23, 2004, in Courtroom 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101.

3. Any response to this motion must be filed and delivered not later than 10:00 a.m. on September 22, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than September 20, 2004, 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. This court has jurisdiction over this motion 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 20, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. §§ 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9006-1, 9013-1 through 9013-5. Movant requests relief with respect to denial of confirmation of the debtors' proposed Chapter 13 plan filed July 20, 2004 (the "Plan").

6. The Plan calls for the debtors to make payments to the Trustee of \$647.87 per month for 36 months, for a total of \$23,323.32 (the "Plan Funds").

7. According to Schedule I filed herein, debtors are married with two dependants. The debtor husband is employed at McDowell Roofing as a Roofer and has been so employed

for 6 years. His Schedule I shows his gross monthly income from his employment at \$2,735.25, with \$505.66 deducted from his paycheck. The debtor wife is unemployed. Their combined monthly net income is \$2,229.59. The debtors' expenses, according to Schedule J are \$1,570.13 per month, leaving an apparent excess monthly income of \$646.87. However the debtors list the monthly payment to the Plan as \$647.87.

8. The payment provisions of the Plan are confusing and contradictory. Assets set forth on Schedule B are the following: a 2000 Dodge Ram Truck valued at \$13,500.00, with Arcadia having a secured claim of \$21,660.04, a 1993 Ford Mustang GT and a 1985 boat with a trailer valued at \$3,300.00, with Pine Country Bank having a secured claim of \$6,300.00 on the Mustang and boat with trailer. The debtors are proposing to reset these two loans to the actual value of the collateral within the Plan, while at the same time curing on the default within the Plan, on the same loan. If they revalue, there should not be any default and these default payments should be removed from the Plan leaving disposable income which should be contributed to the plan.

9. The Trustee objects to confirmation of the Plan on the grounds that the debtors' proposed plan does not meet either of the alternative requirements for confirmation under 11 U.S.C. 1325(b)(1), in that it does not propose full payment of their unsecured claims, nor does it devote all of the debtors' projected "disposable income" as that term is defined in 11 U.S.C. §1325(b)(2) for the next 36 months toward their plan payments. Debtors under chapter 13 should contribute all disposable income to the debtors' plan. *In re McDaniel*, 126 B.R. 782, 784 (Bankr. D. Minn. 1991). "Disposable Income" includes all of the debtors' income which is "not reasonably necessary to be expended" by the debtors. 11 U.S.C. §1325(b)(2).

10. Based on the information provided, the debtors' disposable income Plan is not feasible, and confirmation should be denied pursuant to 11 U.S.C. § 1325(a)(6).

11. If testimony is required, an employee of the Trustee, and the debtors, will be called to testify at the hearing on the objection.

WHEREFORE, the Trustee moves the court for an order denying confirmation of the debtors' proposed Chapter 13 Plan filed July 20, 2004, and such other relief as may be just and equitable.

Ulvin and Sullivan Attorneys, P.A.

Dated: September 6, 2004

/e/ Patti J. Sullivan
By: Patti J. Sullivan, ID #170124
Counsel for Chapter 13 Trustee
PO Box 16406
St. Paul, MN 55116
(651) 699-4825

UNITED STATES BANKRUPTCY COURT
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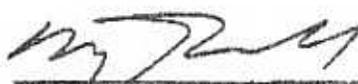
Chapter 13 Case

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VERIFICATION

I, Michael J. Farrell, Chapter 13 Trustee, the Movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed: 9-6-04



Michael J. Farrell, Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
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MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION

FACTS

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

LEGAL DISCUSSION

Plan Does Not Commit all Disposable Income

Section 1325(b)(1)(B) of the Bankruptcy Code provides that the court may not confirm a plan over the objection of the trustee unless the plan provides that all of the debtors' projected disposable income be paid into the plan. Disposable income is defined to mean income received by the debtor, which is not reasonably necessary for the maintenance or support of the debtor or his dependents.

The debtors have disposable income, which they are not committing to their plan. The debtors propose to reset the vehicle loans to the actual value of the collateral in the Plan and cure default on the same loan. The debtors must delete the default payments to the two creditors from the plan, which would result in disposable income. Accordingly, they have not proposed to commit all disposable income to the Plan.

Based on the foregoing, the Court must conclude that the debtors are not in fact paying into the Plan all disposable income. As a result, based on the Trustee's objection, the Plan is not confirmable pursuant to Section 1325(b)(1)(B).

CONCLUSION

The Debtors are not committing all of their disposable income to the plan. Based on all of the foregoing, confirmation should be denied.

Respectfully submitted:

Dated: September 6, 2004

/e/ Patti J. Sullivan
Patti J. Sullivan, ID #170124
Ulvin and Sullivan Attorneys, P.A.
Counsel for Chapter 13 Trustee
PO Box 16406
St. Paul, MN 55116
(651) 699-4825

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Joeline Kissinger, legal assistant for attorneys for Michael J. Farrell, Chapter 13 Trustee, declare that on September 7, 2004, I served the attached Notice of Hearing and Motion Objecting to Confirmation of Chapter 13 Plan, Memorandum of Facts and Law, and proposed Order on the individuals listed below, in the manner described:

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

United States Trustee
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

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

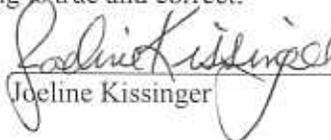
William Dale Schultz
109 11000 Hwy 10 NW
Rice, MN 56367

Karen Lynn Schultz
109 11000 Hwy 10 NW
Rice, MN 56367

Stephen L. Heller, Esq.
Heller Law Firm
606 25th Avenue South #110
St. Cloud, MN 56301

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

Executed: September 7, 2004


Joeline Kissinger

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

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ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN

At St. Paul, Minnesota, September 23, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to confirmation of the debtors' proposed Chapter 13 plan.

Appearances were noted in the minutes.

Upon the verified motion and all of the files, records and proceedings herein:

IT IS ORDERED:

Confirmation of the debtors' Chapter 13 plan filed July 20, 2004 is DENIED.

GREGORY F. KISHEL
CHIEF JUDGE OF U.S. BANKRUPTCY COURT