

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 04-34240 GFK
Chapter 13

John Frederick Dahlmeier,

***OBJECTION TO CONFIRMATION
OF MODIFIED PLAN DATED
AUGUST 11TH, 2004***

Debtor.

TO: Debtor, John Frederick Dahlmeier; Attorney for Debtor, David M. Dahlmeier; Jasmine Z. Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. AmeriCredit Financial Services, Inc., ("AmeriCredit") a secured creditor of Debtor, by its undersigned attorney, makes this objection to the confirmation of the proposed Modified Plan of the Debtor.

2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and AmeriCredit requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 Modified Plan (the "Modified Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.

3. Hearing on confirmation of the Modified Plan is scheduled for 10:30 a.m. on September 23, 2004, before the Honorable Gregory F. Kishel, in Courtroom 13 United States Courthouse, 200 Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

4. The petition commencing this Chapter 13 case was filed on July 21, 2004 and the case is now pending in this Court.

5. AmeriCredit holds a valid, perfected interest in a 2001 Honda Civic, VIN 1HGEM21511L095007, (the "Vehicle"). The value of the Vehicle is \$10,400.00.

6. Copies of AmeriCredit's agreement with Debtor (the "Contract") and evidence of perfection of AmeriCredit's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The balance due to AmeriCredit as of the petition date totals \$12,828.60 together with interest accruing at the contract rate of 16.95%. The fair market value of the Vehicle is \$10,400.00. Accordingly, the claim of AmeriCredit should be treated as secured to the extent of \$10,400.00.

8. The Modified Plan, however, provides for a secured claim of \$7,000.00 for AmeriCredit to be paid pro rata with 8% interest.

9. The Modified Plan fails to satisfy AmeriCredit's secured claim plus interest utilizing the payments set forth by Debtor.

10. The Modified Plan does not comply with the provisions of Chapter 13.

11. The Modified Plan does not provide AmeriCredit with adequate protection of its interest in the vehicle.

12. Movant gives notice that it may, if necessary, call Tommie Greer or another representative of AmeriCredit to testify at the hearing.

13. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

WHEREFORE, AmeriCredit respectfully requests this Court to enter an order denying confirmation of the Debtor' proposed Modified Plan and such other further relief as is just and equitable.

Dated: September 13, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn
Marilyn J. Washburn (#0324140)
7700 Bonhomme, 7th Floor
St. Louis, MO 63105
(314) 727-0101
Attorneys for AmeriCredit

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Debtor.

***MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION***

AmeriCredit submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

AmeriCredit holds a valid, perfected interest in a 2001 Honda Civic, VIN 1HGEM21511L095007 (the "Vehicle").

The balance due to AmeriCredit as of the petition date totals \$12,828.60. The interest rate on the Contract is 16.95%. The fair market value of the Vehicle is \$10,400.00.

Accordingly, the claim of AmeriCredit should be treated as secured to the extent of \$10,400.00.

The Modified Plan, however, provides for a secured claim of \$7,000.00 for AmeriCredit to be paid pro rata with 8% interest.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a Modified Plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy AmeriCredit's secured claim plus interest at the contract rate. Accordingly, the Modified Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

For all of the reasons set forth herein, AmeriCredit respectfully requests that the Court deny confirmation of Debtor's Chapter 13 Modified Plan.

Dated: September 13, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn

Marilyn J. Washburn (#0324140)

7700 Bonhomme, 7th Floor

St. Louis, MO 63105

(314) 727-0101

Attorneys for AmeriCredit

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UNSWORN DECLARATION FOR PROOF OF SERVICE

Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, PC, with an office address of 7700 Bonhomme, 7th Floor, St. Louis, MO 63105, declares that on the date set forth below, I served the annexed **Objection to Confirmation** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Louis, Missouri addressed to each of them as follows:

United States Trustee
300 South 4th Street, Suite 1015
Minneapolis, MN 55415

(Attorney for Debtor)
David M. Dahlmeier
250 Marquette Avenue, Suite 1200
Minneapolis, MN 55401

(Debtor)
John Frederick Dahlmeier
2737 Mackubin Street No. 4
Roseville, MN 55113

(Trustee)
Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

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

Dated: September 13, 2004

Signed: /e/ Marilyn J. Washburn

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ORDER

This matter came before this Court for confirmation of the Chapter 13 Modified Plan of reorganization of Debtor. Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Chapter 13 Modified Plan of Debtor is denied.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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VERIFICATION

I, Marissa Olson, an employee of AmeriCredit Financial Services, Inc. named in the foregoing Objection to Confirmation, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

DATED: September 8, 2004.

SIGNED: Marissa Olson