

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Case No. 04-34521-GFK

Chapter 13

Steven Roy Fair,

Debtor.

***OBJECTION TO CONFIRMATION***

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TO: Debtor, Steven Roy Fair; Attorney for Debtor, Malin D. Greenberg; Jasmine Z. Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. General Motors Acceptance Corporation, ("GMAC") a secured creditor of Debtor, by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor.

2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and GMAC requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "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 Plan is scheduled for 10:30 a.m. on September 23, 2004, before the Honorable Gregory F. Kishel, in Courtroom 228 b 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 August 3, 2004 and the case is now pending in this Court.

5. GMAC holds a valid, perfected interest in a 2000 Chevrolet Impala, VIN 2G1WH55KXY9147799, (the "Vehicle"). The value of the Vehicle is \$11,184.90.

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

incorporated herein by reference.

7. The balance due to GMAC as of the petition date totals \$10,700.89 together with interest accruing at the contract rate of 13.25%. The fair market value of the Vehicle is \$11,684.90. Accordingly, the claim of GMAC should be treated as secured to the extent of \$11,684.90.

8. The Plan, however, provides for (i) GMAC's secured claim of \$11,000.00; (ii) to be paid a total payment on GMAC's secured claim of \$8,000.00; with (iii) monthly payments of \$350.00 commencing in month 1 until paid in full.

9. Using the contract rate of interest, the Plan fails to satisfy GMAC's secured claim plus interest utilizing the payments set forth by Debtor.

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

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

12. Movant gives notice that it may, if necessary, call J. Wood or another representative of GMAC to testify at the hearing.

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

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

Dated: \_September 16, 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 GMAC

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

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

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

FACTS

GMAC holds a valid, perfected interest in a 2000 Chevrolet Impala, VIN 2G1WH55KXY9147799 (the "Vehicle").

The balance due to GMAC as of the petition date totals \$10,700.89. The interest rate on the Contract is 13.25%. The fair market value of the Vehicle is \$11,684.90. Accordingly, the claim of GMAC should be treated as secured to the extent of \$11,684.90.

The Plan, however, provides for (i) GMAC's secured claim of \$11,000.00; (ii) total payment on GMAC's secured claim of \$8,000.00; and (iii) monthly payments of \$350.00 commencing in month 1 until paid in full.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a 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 GMAC's secured claim plus interest at the contract rate. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

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

Dated: September 16, 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 GMAC

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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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)  
Malin D. Greenberg  
600 S. Hwy 169 Ste. 1525  
St. Louis Park, MN 55426

(Debtor)  
Steven Roy Fair  
1337 Honeysuckle Lane  
Hastings, MN 55033

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

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

Dated: September 16, 2004

Signed: /e/ Marilyn J. Washburn

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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Case No. 04-34521-GFK  
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In re:

Steven Roy Fair,

Debtor.

***ORDER***

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This matter came before this Court for confirmation of the Chapter 13 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 plan of Debtor is denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory F. Kishel  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 13

Steven Roy Fair,

Bky. No. 04-34521-GFK

Debtor(s).

**Affidavit of J. Wood**

I, J. Wood, of General Motors Acceptance Corporation, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. General Motors Acceptance Corporation has a security interest in the following (the "Collateral"):

U00 CHEVIMPALA VIN/HIN: 2G1WH55KXY9147799.

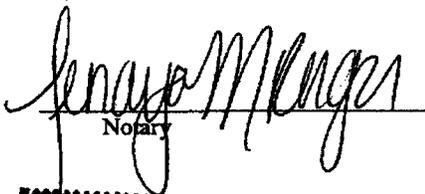
2. \$10,700.89 is the outstanding balance under the contract as of August 3, 2004.
3. \$0.00 is the amount of the existing delinquency as of August 3, 2004.
4. \$11,184.90 is the replacement value of the Collateral.
5. Yes Appropriate insurance has been verified.

Further your affiant sayeth not.

Dated: 8/30/2004

  
\_\_\_\_\_  
J. Wood  
Bankruptcy Specialist  
General Motors Acceptance Corporation

Subscribed and sworn to before me on August  
30, 2004

  
\_\_\_\_\_  
Notary

