

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Case No.: 04-34708

*Cameron Robert Kellogg and
Lamona Renee Kellogg,*

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 October 14, 2004 in Courtroom 228A, 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 October 13, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than October 8, 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 August 11, 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 on August 11, 2004 (the "Plan").

6. The Plan calls for the debtors to make payments to the Trustee of \$150.00 per month for 36 months, for a total of \$5,400.00 (the "Plan Funds"), with \$1,242.58 to unsecured creditors for a dividend to the unsecured creditors of .05 percent.

7. The debtor husband is employed as a Roofer (Subcontractor) for Tip Top

Construction and Roofing and his Schedule I shows his gross monthly income to be \$5,000.00. The debtor husband has nothing deducted from his gross monthly income. It appears from the schedule that he is self-employed. The debtor wife is unemployed and her Schedule I shows her gross monthly income to be \$0.00. The debtors' expenses, according to Schedule J are \$4,849.88 per month, leaving an apparent monthly income of \$150.12.

8. Schedule J reflects an expense of \$800.00 for other business expenses and \$400.00 in insurance taxes.

9. The trustee has requested additional information from the debtors concerning the debtor husband's business so the trustee could verify their income and expenses in order to determine feasibility. To date, the requested information has not been provided. Accordingly, because the information has not been provided, the feasibility of the plan is unknown.

10. Based on the information provided, the debtors' 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 August 11, 2004, and such other relief as may be just and equitable.

Ulvin and Sullivan Attorneys, P.A.

Dated: October 1, 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

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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: 10-1-04



Michael J. Farrell, Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
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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

The “feasibility” requirement for confirmation of a Chapter 13 plan is largely subsumed in 11 U.S.C. § 1325(a)(6), which requires a finding that “the debtor will be able to make all payments under the plan and to comply with the plan.” Before a Chapter 13 plan can be confirmed, the bankruptcy court must determine that the debtor is able to make the payments required in the plan. 11 U.S.C. § 1325(a)(6). Because a debtor files for bankruptcy in the first instance after experiencing financial difficulties, it would be a waste of the bankruptcy system’s resources to affirm plans that debtors are unable to follow. The debtors have the burden of proving that the plan is feasible. In Re Endicott 157 B.R. 255 (W.D. Va 1993) citing In Re Hogue 78 Bankr. 867, 871 (Bankr. S.D. Ohio 1987)

The Trustee submits that the proposed Plan is not feasible. The trustee has not been provided with documentation to verify income and expenses to ensure that the debtors have the income to ensure that the plan is feasible.

CONCLUSION

The debtors’ Plan is not feasible because the Trustee has not received the requested business forms and accounting information and feasibility cannot be determined without said documentation. Confirmation should be denied.

Respectfully submitted:

Dated: October 1, 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 October 1, 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:

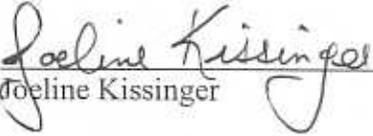
Cameron Robert Kellogg
1608 Bonnie Lane
St. Peter, MN 56082

Lamona Renee Kellogg
1608 Bonnie Lane
St. Peter, MN 56082

Stephen J. Behm, Esq.
115 East Hickory Street, Suite 200
P.O. Box 1056
Mankato, MN 56002-1056

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

Executed: October 1, 2004


Joeline Kissinger

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Case No.: 04-34708

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Debtors.

Chapter 13 Case

ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN

At St. Paul, Minnesota, October 14, 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 August 11, 2004 is DENIED.

Dennis D. O'Brien
United States Bankruptcy Judge