

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE:

STEPHIA LORAE McNEAL,

Debtor.

BK #89-11676-WHB
Chapter 13

**MEMORANDUM OPINION AND ORDER ON
CREDITORS' OBJECTIONS TO CONFIRMATION
OF CHAPTER 13 PLAN**

This core proceeding¹ is before the Court on the objections to confirmation of the debtor's Chapter 13 plan filed by two of her creditors, Jet T.V. Rental and Furniture World. At issue is whether the nature of the rental agreements between these parties and the debtor precludes payment of the creditors' claims through the plan. The following constitutes findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052.

The record reflects that the debtor filed her voluntary petition for Chapter 13 relief on October 2, 1989. At the same time, the debtor filed her proposed Chapter 13 plan which provides for the payment of these creditors' claims monthly in amounts equal to those payments required by the lease contracts with these creditors. The creditors object to this proposed plan and assert that they should be paid by the debtor directly outside the plan given that their contracts comply with Tennessee Code Annotated §47-18-601, *et. seq.*

Tennessee Code Annotated §47-18-601, *et. seq.* govern Rental-Purchase Agreements in Tennessee. This section of the Tennessee Code is entitled the "Tennessee Rental-Purchase Agreement Act." T.C.A. §47-18-601 (hereinafter "Act"). The sections of the Act provide guidelines necessary for an agreement to constitute a "Rental-Purchase Agreement." The legislative purpose of the Act is set forth at §47-18-602 as follows:

¹ *See*, 28 U.S.C. §157(b)(2)(L).

It is the purpose of this part to assure meaningful disclosure of the terms of rental-purchase agreements, to make consumers aware of the total cost attendant with such agreements, to inform the consumer when ownership will transfer and to assure accurate disclosures of rental-purchase terms in advertising.

A "Rental-Purchase Agreement" within the meaning of the Act is defined at §47-18-603(7) as follows:

. . . an agreement for the use of personal property by a natural person primarily for personal, family or household purposes, for an initial period of four (4) months or less (whether or not there is any obligation beyond the initial period) that is automatically renewable with each payment and that permits the consumer to become the owner of the property.

Section 47-18-604 enumerates the disclosures required for each rental purchase agreement and among these is disclosure of the "cash price" of the property.

The balance of the Act, §47-18-605 through 614 set forth, respectively, the "form" of the required disclosures; terms prohibited from use in a Rental-Purchase Agreement; provisions for termination and reinstatement of such agreements; requirement that the lessor is to provide receipts for payments made pursuant to such agreements; provisions for renegotiations and extensions of such agreements; requirements for any advertisements of rental purchase agreements; civil liability of the lessor who fails to comply with the Act's provisions; a statute of limitations for any action brought pursuant to the Act; and good faith defenses for any lessor and criminal liability for willful violation of the Act. However, the Court can find no language in the Act which indicates that an agreement governed by its provisions may not be paid through a Chapter 13 plan. Neither has the Court been able to locate any cases so holding; thus, the Court fails to see why the fact that the agreements here may² comply with the Act precludes them from being paid through the Chapter 13 plan. As such, the creditors' objections on this basis are overruled.

² A close examination of the agreements at issue here reveals that neither fully comply with all of the provisions of the Act. The Jet T.V. Rental agreements fail to disclose a "cash price" for the leased goods as required by T.C.A. §47-18-604(8) and defined by T.C.A. §17-18-603(2). The Furniture World agreement does not comply in that it is for an "initial term" of more than 4 months. However, it is not necessary for the Court to rely on this finding as the basis for its conclusion given the additional findings discussed above.

As additional grounds for their objections, the creditors assert that the agreements place no obligation upon the debtor which would require her to continue payments for the term of the agreement. Indeed, the agreements do provide that the debtor is only required to make weekly or monthly payments on a week to week or month to month basis thus giving the appearance that the debtor is not required to continue payments. However, in order to retain the property that is leased, she must maintain these payments and in order to purchase the property pursuant to the agreements, she must continue payments for the term of the lease agreements. In other words, there is no requirement for her to continue the payments unless she wishes to retain the property. This is so whether the payments are made through or outside the Chapter 13 plan. Similarly, it would be necessary for the creditors to move for a lifting of the automatic stay imposed by §362(a) in the event of default by the debtor whether or not the payments are made through the Chapter 13 plan in order to repossess the property.

Therefore, the creditors' objections to confirmation of the debtor's Chapter 13 plan on this basis is overruled and the plan may be confirmed and the ongoing lease payments may be paid through the plan.

IT IS HEREBY ORDERED that the objections of Jet T.V. Rental and Furniture World to confirmation of the debtor's Chapter 13 plan are **OVERRULED**.

So **ORDERED** this 11th day of January, 1990.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE

cc:

Stephia Lorae McNeal
Debtor
49 Fox
Jackson, Tennessee 38301

Mr. John Van den Bosch, Jr.
Attorney for Debtor
107 South Shannon Street
Jackson, Tennessee 38301

Mr. Ernie H. Gray
Chapter 13 Trustee
Post Office Box 1313
Jackson, Tennessee 38302-1313

Mr. Roger Staton
Attorney for Creditors
Post Office Box 2163
Jackson, Tennessee 38302

(Unpublished but affirmed
by district court)