

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

IN RE:

Geraldine Williams,

Debtor(s).

C/A No. 24-01366-HB

Chapter 13

**ORDER REGARDING  
CONFIRMATION OF PLAN**

**THIS MATTER** came before the Court on September 5, 2024, to consider confirmation of the Chapter 13 plan filed by Debtor Geraldine Williams<sup>1</sup> and the Objection of Creditor Big Dog Lending.<sup>2</sup> Appearances were made by Peter D. Korn of Moss & Associates, Attorneys, P.A. on behalf of Debtor, Lucas S. Fautua on behalf of Creditor, and Chapter 13 Trustee Annemarie B. Mathews. Debtor did not appear at the hearing. No testimony nor exhibits were presented. The parties filed a Joint Statement of Dispute that references items in the Court’s records.<sup>3</sup>

Many relevant facts are not in dispute. Pre-petition, on November 2, 2022, Debtor and Creditor entered a Rental Purchase Agreement (the “Agreement”) regarding a 10 X 12 White Black HandiHouse Lap Wood (Serial: wkl 1130) (the “Shed”).

On April 16, 2024, Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code to initiate the above-captioned case.<sup>4</sup> Attached to the petition was a mailing matrix, which included Creditor. On the same date, the Court issued a Notice of Chapter 13 Bankruptcy Case (Official Form 309I) (the “Notice of Chapter 13”), which provided information to parties in interest, including that the confirmation hearing would be held on June 27, 2024, and advised that “[a]ny objection to confirmation of the chapter 13 plan must be filed and served at least seven days

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<sup>1</sup> ECF No. 26, filed July 22, 2024.

<sup>2</sup> ECF No. 28, filed Aug. 13, 2024.

<sup>3</sup> ECF No. 31, filed Sept. 4, 2024.

<sup>4</sup> ECF No. 1.

prior to the confirmation hearing” and “[i]f no objection is timely filed, the plan may be confirmed on recommendation of the trustee.”<sup>5</sup> The Notice of Chapter 13 was served on parties in interest, including on Creditor by first class mail at the address listed for it on the creditor matrix.<sup>6</sup>

On May 14, 2024, after an extension of the deadline, Debtor filed schedules and statements.<sup>7</sup> On Schedule A/B (Property), Debtor indicated she owns the Shed and listed its value at \$200.00. On Schedule D (Creditors Who Have Claims Secured by Property), Debtor listed Creditor as having a \$5,781.47 debt secured by the Shed.

Also on May 14, 2024, Debtor filed a Chapter 13 plan.<sup>8</sup> In Section 3.2 of that plan, Debtor proposed to treat Creditor’s claim as a secured claim—purportedly secured by the Shed—and value it pursuant to § 506(a)(1) at \$200.00 based on Debtor’s stated value. The plan proposed Creditor would be paid \$5.00 per month through disbursements made by the Trustee at nine percent (9.00%) interest. The plan was served on Creditor at the address listed for it on the mailing matrix.<sup>9</sup> As noted in the Notice of Chapter 13 and as provided by Fed. R. Bankr. P. 3015(f), the deadline to file an objection to confirmation was June 20, 2024, seven (7) days prior to the June 27, 2024, confirmation hearing. While another creditor filed an objection to confirmation,<sup>10</sup> Creditor did not.

On June 20, 2024, Creditor filed a timely proof of claim for \$5,781.47, with a pre-petition arrearage listed of \$395.20.<sup>11</sup> The proof of claim indicates the claim is secured by the Shed and the Agreement is attached. The value of the Shed is stated by Creditor as \$4,280.00. As of the date of entry of this Order, Debtor has not filed an objection to Creditor’s claim.

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<sup>5</sup> ECF No. 2.

<sup>6</sup> ECF No. 6, entered Apr. 18, 2024.

<sup>7</sup> ECF No. 11.

<sup>8</sup> ECF No. 13.

<sup>9</sup> ECF No. 14, filed May 14, 2024.

<sup>10</sup> ECF No. 15, filed May 20, 2024.

<sup>11</sup> Claim No. 11-1.

The confirmation hearing was continued to July 11, 2024. Before the continued hearing date, the other creditor's objection to confirmation was settled,<sup>12</sup> and the Court, upon the request of the Trustee, entered a form order denying confirmation, requiring Debtor to file and serve a modified plan within ten (10) days, and providing that "[t]he plan, or any modified plan, may be confirmed without further notice or a hearing if there are no objections and the Trustee recommends confirmation."<sup>13</sup>

On July 22, 2024, Debtor filed the Chapter 13 plan under consideration, which provides the exact same treatment of Creditor's claim as in the prior plan.

On August 13, 2024, Creditor filed its Objection, which alleges that Debtor is delinquent a total of \$790.40 as a result of missing payments due from April through July of 2024 and that the remaining balance of payments under the Agreement is \$5,781.47. The Objection asserts that the Agreement is a true lease that Debtor should assume or reject pursuant to § 365. Creditor also argued that the plan improperly seeks to transfer ownership of the Shed from Creditor to Debtor, and that such relief is required to be sought through an adversary proceeding pursuant to Fed. R. Bankr. P. 7001(2).

"This Court and others have held that a secured creditor's failure to object to its treatment in a Chapter 13 plan constitutes acceptance of the plan under § 1325(a)(5)(A)." *In re Powell*, 640 B.R. 882, 883 (Bankr. D.S.C. 2022) (citing *In re Stephens*, C/A No. 18-01736-JW, slip op. at 5 (Bankr. D.S.C. Oct. 16, 2018) (collecting cases)); *see also In re Crawford*, 532 B.R. 645, 650 (Bankr. D.S.C. 2015) (citing cases). Under section 1323, a secured creditor that has accepted a plan is deemed to accept a modified plan that provides the same treatment of its claim as the original plan. *See* 11 U.S.C. § 1323(c).

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<sup>12</sup> ECF No. 19, filed July 5, 2024.

<sup>13</sup> ECF No. 21, entered July 8, 2024.

The Court finds that Creditor's Objection is overruled as untimely. Creditor is deemed to have accepted the prior plan and therefore has accepted this plan that provides identical treatment. However, "[i]t is well established that '[w]hether or not a specific confirmation objection has been made, this court has the right to independently determine that a debtor's proposed chapter 13 plan meets all statutory requirements based upon the evidence presented at confirmation.'" *In re White*, 618 B.R. 748, 752 (Bankr. E.D.N.C. 2020) (quoting *In re Soppick*, 516 B.R. 733, 752 (Bankr. E.D. Pa. 2014)). "The court thus 'has an independent duty to ensure that a plan complies with the Bankruptcy Code, even if no objections are filed.'" *Id.* (quoting *In re Revels*, 616 B.R. 675, 678 (Bankr. E.D.N.C. 2020)); *In re Madera*, 445 B.R. 509, 513 (Bankr. D.S.C. 2011). Accordingly, although Creditor is deemed to have accepted the original plan under § 1325(a)(5) and thus the modified plan as well, after considering the facts and with knowledge of Creditor's position, further review is appropriate.

Bankruptcy Rule 7001 provides "a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d)" is an adversary proceeding. Fed. R. Bankr. P. 7001(2). The plain terms of the rule indicate it is not applicable to this issue, which concerns the *nature* of Creditor's claim, not its validity, priority, or extent, which is why such determinations have been made outside the context of an adversary proceeding. *See In re Parker*, 363 B.R. 769 (Bankr. D.S.C. 2006) (determining that debtors' agreements with creditors were true leases rather than disguised security agreements in the context of a confirmation hearing); *In re Johnson*, 571 B.R. 167 (Bankr. E.D.N.C. 2017) (determining that an agreement between debtor and creditor was a true lease in the context of creditor's Motion to Compel Debtor to Assume or Reject Lease Agreement); *In re Roberts*, 620 B.R. 336 (Bankr. D.N.M. 2020) (determining that an agreement between debtor and creditor was a true lease in the

context of creditor's motion for relief from stay). On these facts, there does not appear to be any reason to require an adversary proceeding. Creditor does not contend that it failed to receive adequate notice of Debtor's proposed treatment of its claim as a secured claim and the determination of whether the Agreement is a true lease or a disguised security agreement is a legal one made by referencing the terms of the Agreement in the record.

Section 1325(a)(3) requires that the plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). This Court has the right, and in some instances the duty, to independently determine that a debtor's proposed Chapter 13 plan meets all statutory requirements.

The determination of whether an agreement between a debtor and a creditor is a true lease or a disguised security agreement is governed by state law. *Parker*, 363 B.R. at 772 (citing *In re Barnhill*, 189 B.R. 611, 613 (Bankr. D.S.C. 1992)); *In re Paschal*, 619 B.R. 278, 280 (Bankr. M.D. Ga. 2020). Here, the Agreement provides it is governed by Georgia law. Georgia law defines a "lease" as "a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease." Ga. Code Ann. § 11-2A-103(1)(j). "Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case." Ga. Code Ann. § 11-1-203(a). *See also* Ga. Code Ann. § 11-1-203(b) and (c). "In *Summerhill v. Telerent*, [528 S.E.2d 889 (Ga. Ct. App. 2000),] the Georgia Court of Appeals held that an agreement is a lease, and not a secured transaction, if two factors are present: one, the lessor clearly owns the property, the lessee has only the right to possess and use, and the lessor regains possessions at the end of the agreement; two, the lessee's option to purchase at the completion of the lease requires payment of fair market value, not merely a nominal sum." *Paschal*, 619 B.R. at

281 (quoting *In re Bonner*, No. 06–50472 RFH, 2006 WL 2092386, at \*3 (Bankr. M.D. Ga. July 19, 2006)).

Some provisions of the Agreement indicate Debtor is leasing the Shed from Creditor, while others show signs that the Agreement is a disguised security agreement. After a review of the Agreement, the plan, and applicable law, the Court finds that Debtor’s position regarding the nature of the Agreement appears supported by applicable law, and this provision of the plan appears proposed in good faith.

However, Debtor has failed to convince the Court the plan should be confirmed with a proposed valuation of \$200.00 for the Shed. At the time the Agreement was entered—November 2, 2022—the parties agreed the Shed was worth \$4,280.00. Now, less than two (2) years later, Debtor proposes that the Shed has dropped in value by about ninety-five percent (95%) to \$200.00. Debtor failed to attend the hearing to support her request for confirmation and provided no basis for this nominal value. This shockingly low value, unsupported by any testimony, pictures, or any basis in fact whatsoever, leads to the conclusion that the Debtor has not met her burden to show the plan is proposed in good faith. A debtor who elects not to attend a contested confirmation hearing to present any needed testimony or to otherwise meet the burden of proof does so at considerable risk. Based on this record, the Court cannot find that Debtor has proposed this valuation in good faith and therefore that the plan is proposed in good faith pursuant to § 1325(a)(3).

Creditor and Debtor are encouraged to attempt to reach a resolution regarding the value of the Shed for purposes of the plan currently proposed, or agree to a surrender, to avoid further expense in this matter for the benefit of all.

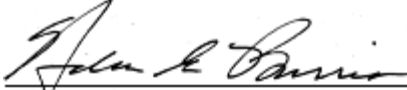
**IT IS, THEREFORE, ORDERED:**

1. Within ten (10) days, Debtor may submit a Consent Order with Creditor Big Dog Lending either consenting to an appropriate value for the Shed under the July 22, 2024, plan, or surrendering the same. Upon filing, the Trustee may elect to recommend confirmation of the July 22, 2024, plan, subject to the modifications set forth in any Consent Order. Absent such a filing, confirmation is denied without further notice or hearing.
2. If confirmation is denied, Debtor shall file and serve a modified Chapter 13 plan within fourteen (14) days of the entry of this Order.<sup>14</sup>
3. Upon Debtor's failure to comply with paragraph (2) above, this case may be dismissed without further notice or hearing upon request of the Trustee.

**FILED BY THE COURT  
09/18/2024**



Entered: 09/18/2024

  
Chief US Bankruptcy Judge  
District of South Carolina

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<sup>14</sup> The Court makes no ruling at this time regarding whether, as a result of the lack of objection to the original plan, Creditor will be deemed to have accepted a modified plan that increases the value of the Shed.