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ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: James Louie Copeland, Jr.

CHAPTER: 13

ATTORNEYS: R. C. Wilson, B. A. Friedman

DATE: 1/12/96

KEY WORDS:

PUBLISHED: No

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

JAMES LOUIE COPELAND, JR.,

Case No. 95-12487-MAM-13

Debtor.

**ORDER DENYING CONFIRMATION**

Robert C. Wilson, Mobile, Alabama for Debtor  
Barry A. Friedman, Mobile, Alabama for Movant

This matter came before the Court upon the objection of Easy Rental Company (“Easy”) to the proposed Chapter 13 plan of Debtor. The court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2) and 157(b)(2)(L). For the reasons indicated below, Easy’s objection is sustained and confirmation is denied.

**FACTS**

From April 1995 to September 1995, Debtor entered into five separate rent-to-own agreements with Easy on five different home appliances: a washer, dryer, television, VCR, and refrigerator. Actually, Debtor’s girlfriend, Ms. Lorrie Garner, signed the contracts on the washer and dryer, but they were both subsequently assigned to the Debtor. On direct examination, Debtor claimed that his intent was to purchase the five appliances by making 52 weekly payments on each. Debtor made weekly payments on the washer, dryer and television until September 1995. Debtor made three weekly payments on the refrigerator and one weekly payment on the VCR before seeking bankruptcy protection.

According to Mr. J. R. Barnes, the Store Manager of Easy, the remaining balance on each appliance as of the date of the bankruptcy filing is as follows:

Washer	\$ 432.40
Dryer	250.85
Television	276.05
VCR	720.81
Refrigerator	<u>834.00</u>
TOTAL	\$2,514.11

Debtor filed a Chapter 13 petition on September 21, 1995. Easy is listed on Schedule D as the holder of several secured claims totaling \$2,809.82. Debtor alleges that all but \$475 of those claims are actually unsecured. On Schedule C, Debtor claims the items securing the \$475 as exempt property. Debtor's Chapter 13 plan proposes to pay Easy a \$50 monthly "preference" with any deficiency being paid 100% on a pro rata basis. Debtor has not filed a motion to assume his rent-to-own agreements pursuant to 11 U.S.C. § 365.

Easy objects to confirmation on the grounds that Debtor's plan fails to comply with 11 U.S.C. §§ 1325(a)(5) and 1325(b)(1)(A).

#### LAW

The treatment of a lease or a security interest in a Chapter 13 bankruptcy case is a question of federal law pursuant to 11 U.S.C. §§ 365 and 1325. The existence, nature and extent of a lease or security interest is a state law question. *Butner v. United States*, 440 U.S. 48 (1978). The

Uniform Commercial Code definition of a "rental-purchase" contract states:

Any rental-purchase agreement in compliance with this chapter shall not be construed to be, nor governed by the laws relating to:

- (a) A "credit sale" as that term is defined in subsection (4) of Section 5-19-1; or
- (b) A "security interest" as that term is defined in subsection (37) of Section 7-1-2-1 of the Uniform Commercial Code.

ALA. CODE § 8-25-1(5) (1991). (Emphasis added.)

Elsewhere, the Alabama statute continues:

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

1. the original term of the lease is equal to or greater than the remaining economic life of the goods, or
2. the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods, or
3. the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.
4. the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

ALA. CODE § 7-1-201(37)(b) (1992). (Emphasis added.)

In a recent combined decision, *In re Trusty, Hobbs and Long*, 1995 WL 744923 (Bankr. N.D. Ala. Nov. 9, 1995), the Court determined that rent-to-own agreements were neither leases nor security interests, but rather “legislatively created commercial devices . . . which qualify under the Bankruptcy Code as executory contracts with all rights and requirements of assumption and cure guaranteed to like contracts.” *Id.* As executory contract, rent-to-own agreements eventually transfer ownership of the personal property after all payments agreed to have been made. *Id.* Leases, on the other hand, never transfer ownership, they simply entitle the lessee use of the property for a specific time period. *Id.*

Other courts have correctly held that rent-to-own agreements should be treated as leases under the Bankruptcy Code. *See, In re Hosea*, No. 94-03806-TOM-13 (Bankr. N.D. Ala.,

S. Div., filed September 27, 1994); *In re Thomas*, No. 93-03687-RCF-13 (Bankr. N.D. Ala., Aug. 31, 1993). The distinction drawn in *Trusty*, is that while the treatment of leases and rent-to-own contracts under the Bankruptcy Code is the same pursuant to 11 U.S.C. § 365, Alabama state law treats each differently. The Alabama legislature has specifically mandated, through the Alabama Rental Purchase Agreements Act, that rent-to-own agreements are to be treated as leases and not disguised sales contracts. ALA. CODE §§ 8-25-1 to 8-25-6. *See, In re Hosea, supra*. This Court agrees with such a distinction.

If Debtor chooses to assume this executory contract pursuant to 11 U.S.C. § 365(b)(1), she would be obligated to provide Easy adequate assurance of the following: (1) the prompt cure of any defaults; (2) compensation for pecuniary losses; and (3) adequate assurance of future performance of the executory contract. 11 U.S.C. § 365(b)(1)(A), (B) and (C). Debtor is prohibited from treating Easy as a secured creditor based on the executory contract. Absent these assurances, the proposed Chapter 13 plan is not confirmable.

Therefore, it is ORDERED that Easy's objection to confirmation is sustained and the confirmation is DENIED.

It is further ORDERED that Debtor have 20 days from the date of this order to file an amended plan consistent with the determination of this Court that Easy's agreement is an executory contract.

Dated: January 12, 1996

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MARGARET A. MAHONEY  
U.S. BANKRUPTCY JUDGE