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ADV. NUMBER:

JUDGE: M. A. Mahoney

PARTIES: Drew Anthony Madere, Paula Jean Madere, GMAC, U-J Chevrolet Co., Inc.

CHAPTER: 13

ATTORNEYS: H. D. Padgett, R. A. Ray, III, J. C. McAleer, III

DATE: 11/12/97

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

DREW ANTHONY MADERE  
PAULA JEAN MADERE

Case No. 96-13548

Debtors.

ORDER DENYING DEBTORS' MOTION TO REDUCE PAYMENTS  
AND GRANTING TRUSTEE'S MOTION FOR INSTRUCTIONS

Herman D. Padgett, Mobile, AL, Attorney for Debtors.  
Royce A. Ray, III, Mobile, AL, Attorney for GMAC.  
John C. McAleer, III, Mobile, AL, Chapter 13 Trustee.

This matter is before the Court on the Chapter 13 Trustee's Motion for Instructions and the Debtors' Motion to Reduce Chapter 13 Payments. 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 is a core proceeding pursuant to 28 U.S.C. §157(b)(2). For the reasons indicated below, GMAC is entitled to distributions under the debtors' confirmed plan equal to those of other administrative creditors, and the debtors' motion to reduce payments is DENIED.

FACTS

Drew Madere leased a 1995 Chevrolet S-10 Pickup (Pickup) from U-J Chevrolet Co., Inc. on September 1, 1995. The lease was assigned to General Motors Acceptance Corporation (GMAC). Drew Madere and his wife, Paula Jean Madere, filed a Chapter 13 bankruptcy petition on September 27, 1996. The Chapter 13 plan filed by the Debtors treats GMAC as a secured creditor and proposes that GMAC receive a monthly preference payment of \$318.29. In addition, the plan states that "Debtors assume lease with GMAC."

GMAC filed a proof of claim on October 15, 1996. The claim was filed on a proof of claim

form as a secured claim for \$8,065.49. However, the claim form indicated that the GMAC claim “is a lease and after payment of last lease payment, debtor must exercise purchase option or surrender vehicle in accordance with lease agreement.” (There is no proof of claim form for leases or other executory contracts or for administrative claims.) On December 3, 1996, the Court signed an order establishing the value of the Pickup at \$12,000.00 and allowing the claim filed by GMAC as a secured claim for \$8,065.49. The order of allowance did not indicate, as did the proof of claim, that the claim was a lease claim.

On December 3, 1996, the Court also signed an order confirming the Debtors’ plan as orally amended. The confirmation order provides that the Debtors will pay to the Trustee \$503.00 per month, and the Trustee will pay GMAC, a secured creditor, a preference payment of \$318.29 per month. There is no language in the confirmation order pertaining to assumption of the lease.

On December 9, 1996, the debtors filed an objection to the proof of claim filed by GMAC. The debtors alleged that no itemized statement was attached to the claim. The debtors requested that their objection be sustained and the claim disallowed. No response was filed to the objection. The Court sustained the objection and disallowed the claim on January 14, 1997.

On August 15, 1997, GMAC filed a motion in which it alleged that it had not received any payments from the Chapter 13 Trustee. GMAC requested that the Court order the Trustee to withhold distributions to all creditors except GMAC, until payments to GMAC were brought current. No objection to the motion was filed. The Court granted the motion on September 10, 1997.

On September 19, 1997, the Trustee filed a Motion for Instructions. The Trustee advised the Court that GMAC had not received payments because the claim filed by GMAC had been disallowed. The Trustee indicated that he would withhold all distributions, including any

distribution to GMAC, until the Court clarified its position. On September 22, 1997, GMAC responded to the Trustee's motion. GMAC stated in its response that the confirmed Chapter 13 plan orders the Trustee to make distributions to GMAC. It is GMAC's position that if a confirmed Chapter 13 plan provides for distributions to a secured creditor, the creditor is not required to file a claim. In addition to the dispute between the Trustee and GMAC, the Debtors filed a motion to reduce their plan payments to \$258.00 per month.

A hearing was held on October 8, 1997. The debtors offered to relinquish possession of the Pickup. Pursuant to the debtors' offer, the Court ordered that the Pickup be turned over to GMAC by October 14, 1997. Counsel for GMAC reiterated his position that GMAC was entitled to payments because GMAC was provided for in the Debtors' confirmed plan. Counsel argued that a creditor with a secured debt or an administrative expense is not required to file a claim in order to receive distributions from the Chapter 13 Trustee. Conversely, the Trustee argued that a creditor must have an allowed claim in order to share in distributions. As to the reduction of the Debtors' plan payments, the Trustee advised the Court that the reduction could be made if GMAC was not entitled to distributions.

#### LAW

This situation highlights the administrative and procedural problems involved in fitting Chapter 13 cases into the more structured Chapter 7 or Chapter 11 case law models. Chapter 13 doesn't always neatly conform. This Court has not squarely addressed the exact manner in which vehicle lessors, or other lessors, need to proceed to obtain payment in a Chapter 13 case. The issue in this case is what a creditor must do if the creditor has a lease claim. Must the creditor file a claim? If so, when must the claim be filed? What type of claim should the lessor file? The same issues arise as to secured claimants.

Bankruptcy Rule 3002 is silent on whether or when a secured creditor must file a proof of claim to protect its rights in a Chapter 13 case. Nothing in the Bankruptcy Code or the Bankruptcy Rules requires a secured creditor to file a claim. The United States Supreme Court reemphasized a secured creditor's option not to file a claim by concluding that failure to file does not affect a lien's validity. *Dewsnup v. Timm*, 502 U.S. 410, 417-418, 112 S.Ct. 773, 778, 116 L.Ed.2d 903 (1992). However, if a secured creditor seeks to participate in cash distributions under a confirmed Chapter 13 plan, it must file a proof of claim. Bankruptcy Rule 3021 requires distributions pursuant to plans to be made only to those creditors whose prepetition claims are allowed after confirmation. An allowed claim under 11 U.S.C. § 502 is one that has been filed pursuant to 11 U.S.C. § 501. Thus, in order for both secured and unsecured claims to be paid, they must be allowed after they have been filed under § 501. See *In re Schaffer*, 173 B.R. 393, 394 (Bankr. N.D.Ill. 1994); *In re Alderman*, 150 B.R. 246, 251 (Bankr. D.Mont. 1993); *In re Wells*, 125 B.R. 297, 300 (Bankr. D.Colo. 1991); *In re Thomas*, 91 B.R. 117, 121 n.9 (Bankr. N.D.Ala. 1988), *aff'd* on other grounds, 883 F.2d 991 (11th Cir. 1989); Henry Hildebrand, III, *Filing of Claims by Secured Creditors*, 13-May Am.Bankr.Inst.J. 17 (1994). This Court acknowledges and declines to adopt the reasoning of those courts that have determined that a secured creditor need not file a proof of claim to be paid in a Chapter 13 case. See *In re Rome*, 162 B.R. 872 (Bankr. D.Colo. 1993); *In re Edwards*, 162 B.R. 868 (Bankr. D.Colo. 1993); *In re Babbin*, 156 B.R. 838 (Bankr. D.Colo. 1993); *In re Judkins*, 151 B.R. 553 (Bankr. D.Colo. 1993).

GMAC filed a proof of claim which was allowed as a secured claim, although in the body of the claim it stated it was a lease claim. Thereafter, an objection to the claim was filed and notice was given to GMAC. GMAC did not file a response to the objection. The Court disallowed the claim. GMAC did not file a motion to reconsider. Thereafter, GMAC's claim was not paid pursuant

to Bankruptcy Rule 3021, regardless of whether it was a secured claim or a lease claim.

At the hearing, GMAC argued that it was entitled to payment as an administrative claimant. This Court held in the case *In re Calvin Spencer, Jr.* (Case No. 95-11977) order dated August 2, 1996, that the assumption of a lease transforms liability under the lease into an administrative expense. A creditor may file a request for payment of an administrative expense pursuant to 11 U.S.C. § 503. In this case, GMAC filed a proof of claim labeled both as an administrative claim and a secured claim. Instructions on the form indicate that the form “should not be used to make a claim for an administrative expense arising after commencement of the case.” On December 3, the Court signed an order allowing the claim filed by GMAC as a secured claim. GMAC did not object. The confirmation order states that GMAC is a secured creditor. GMAC did not object. The confusion created by the filing for GMAC, the Court, the debtors and the Chapter 13 Trustee is obvious. The Court generated orders suitable for a secured claim and the Chapter 13 Trustee acted accordingly. Due to the confusion, it is unfair to penalize GMAC. It thought it was protected by the assumption of the lease. The claim should be allowed. In the future, creditors who have leases or executory contracts which are assumed by the debtor in a Chapter 13 plan should do the following:

1. Timely file a request for payment of administrative claim, indicating on the form that the claim is an executory contract or lease.<sup>1</sup> DO NOT FILE THE REQUEST ON A PROOF OF CLAIM FORM.
2. Require the debtor’s plan (and the confirmation order) to state that the executory contract is assumed. If not, object.
3. Object if the Court enters an Order allowing the claim as a secured claim.

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<sup>1</sup> Technically, the request should be filed in the case not with other claims if the procedure were to work as in Chapter 7 or Chapter 11. However, due to the fact that the Trustee must treat the claim in many respects as other claims, it must be filed like a prepetition claim with the Chapter 13 Trustee.

THEREFORE, IT IS ORDERED that the Trustee put GMAC in the same position as other administrative claimants in the plan and the motion of the debtors to reduce their plan payments is DENIED.

Dated: November 12, 1997

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MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE