

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of: )  
 )  
 ) **Chapter 13 Case**  
**DAVID McBRIDE** )  
 )  
 ) **Number 93-41634**  
 )  
 ) *Debtor* )

**MEMORANDUM AND ORDER ON DEBTOR'S  
MOTION TO APPLY EXEMPT FUNDS TO CHAPTER 13 CASE**

**This matter comes before the Court on Debtor's Motion to Apply Exempt Funds to Chapter 13 Case. For the reasons set forth below, Debtor's Motion will granted in part and denied in part.**

**FINDINGS OF FACT**

**Debtor filed a petition under Chapter 13 of the Bankruptcy Code on September 22, 1993. On June 29, 1993, the Court confirmed Debtors' Chapter 13 plan, which requires Debtor to pay \$582.00 per month to the Chapter 13 Trustee. The plan is expected to yield a 100% dividend to unsecured creditors.**

**Prior to filing his Chapter 13 case, Debtor had entered into a contract to sell his home at a price of \$107,000.00. Debtor claimed an exemption of \$5,400.00 under**

O.C.G.A. Section 44-13-100 in the net equity derived from the sale. On September 24, 1993, Debtor filed a Motion to Sell, seeking permission to go forward with the sale. By Order entered October 15, 1993, this Court authorized the sale of the house at the price of \$107,000.00, and ordered all proceeds, less customary closing costs and lien claims, be paid to the Chapter 13 Trustee subject to further judicial determination. The Chapter 13 Trustee subsequently filed an objection to Debtor's claim of exemption. By Order entered May 17, 1994, this Court held that Debtor had an allowable exemption in the amount of \$5,400.00 in the proceeds, but that he could not, under section 522(c) of the Bankruptcy Code, cash out his exemption until he had successfully completed his Chapter 13 case. See Matter of Mattie M. Deeble, d/b/a Deeble Personal Care Home and David McBride, Chapter 13 Case Nos. 92-41158 and 93-41634, slip op. (Bankr. S.D.Ga. May 17, 1994).

On February 15, 1995, Debtor filed the present Motion seeking to apply the proceeds held by the Chapter 13 Trustee to his Chapter 13 case. Specifically, Debtor seeks application of the proceeds to two secured debts, one owed to Wachovia Bank and the other to the Internal Revenue Service. The Trustee filed, in response to Debtor's Motion, a Motion to Apply Equity to Unsecured Debts, in which she consents to distribution of the funds but asks that the funds be applied to the claims of unsecured creditors.

CONCLUSIONS OF LAW

Debtor's confirmed Chapter 13 plan governs that order and priority of payments made by the Trustee to Debtor's creditors in this case. Confirmation of a Chapter 13 plan is *res judicata* as to any and all issues that were or could have been litigated at the confirmation hearing.<sup>1</sup> Debtor's confirmed plan provides that

2. From the payments so received, the Trustee shall make disbursements as follows:

(a) The priority payments required by 11 U.S.C. §507.

(b) Secured creditors shall retain liens securing their claims. Creditors *who file claims* and whose claims are allowed as secured claims shall be paid the lesser of (1) the amount of their claim, or (2) the value of their collateral as set forth here:

Wachovia \$9,412

(c) Subsequent to secured creditors, dividends to unsecured creditors *who file claims* and whose claims are allowed (including the unsecured balance of any partially secured debt) shall be paid:

*Check one:*

In the following percentage of 100%, or

Pro-rata, from remaining funds in an amount to be estimated at confirmation.

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<sup>1</sup>See e.g., In re Szostek, 886 F.2d 1405, 1408 (3d Cir. 1989); In re Linkous, 990 F.2d 160, 162 (4th Cir. 1993); In re Howard, 972 F.2d 639, 642 (5th Cir. 1992); In re Evans, 30 B.R. 530, 531 (9th Cir. BAP 1983); In re Klus, 173 B.R. 51, 54 (Bankr. D.Conn. 1994).

Thus, because Debtor's confirmed Plan establishes the order and priority of distribution to creditors, the Trustee is barred from seeking to alter that priority. Accordingly, the Court will order the Chapter 13 Trustee to distribute the settlement proceeds currently in her custody in accordance with the terms of Debtor's confirmed Chapter 13 plan.

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**O R D E R**

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Chapter 13 Trustee distribute the settlement proceeds which she presently holds in the order and priority established by Debtor's confirmed Chapter 13 plan.

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**Lamar W. Davis, Jr.**  
**United States Bankruptcy Judge**

**Dated at Savannah, Georgia**

**This        day of May, 1995.**