

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>89-10179</u>
MILDRED LOUISE COLE HOLLIS	)	
	)	
Debtor	)	FILED
	)	at 3 O'clock & 39 min. P.M.
RENT CITY	)	Date: 12-12-89
	)	
Movant	)	
	)	
vs.	)	
	)	
MILDRED LOUISE COLE HOLLIS	)	

**ORDER**

Rent City objects to confirmation of the proposed plan or Mildred Louise Cole Hollis, debtor in this Chapter 13 proceeding, and moves for relief from stay in order to take possession of what Rent City contends is its property. The debtor filed her petition under the provisions of Chapter 13 of Title 11 of the United States Code on February 7, 1989, and proposed a composition plan of repayment of Sixty and No/100 (\$60.00) Dollars per month to the Chapter 13 Trustee for a period of 36 months. The proposed plan provided that from the payments received, the Trustee would make disbursement to creditors holding allowed

secured claims the lessor of 1) the amount of their claim or 2) the value of their collateral

(as it pertained to Rent City: \$100.00), and 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) pro rata from remaining funds in an amount to be estimated at confirmation. At confirmation hearing, the Chapter 13 Trustee estimated a dividend to the holders of unsecured claims of 49.4%.

Rent City contends that it is the holder of a true lease agreement between it and the debtor and that the debtor no longer has any possessory rights in the property that is the subject matter of the lease agreement. Based upon the evidence presented at hearing, arguments of counsel and briefs submitted, this court makes the following findings of fact and conclusions of law.

On January 13, 1989, debtor and Rent City entered into a written agreement captioned "Lease-Purchase Disclosure".

(Movant's exhibit 1) The property covered under the agreement was one new Sharpe model color television which according to the agreement had an estimated fair market value of Eight Hundred Ninety-Five and 95/100 (\$895.95) Dollars. Rent City did not dispute the debtor's contention that the present value of the television at the time of confirmation was One Hundred and No/100 (\$100.00) Dollars. The initial term designated under the

contract extended from the date of the agreement January 13, 1989 to January 27, 1989 (2 weeks). The contract further established an additional four-week minimum of payments due. The parties are in agreement that the weekly

payment due under the contract was Seventeen and 55/100 (\$17.55) Dollars and as a promotion, Rent City offered the first week rental for One (.01) Cent requiring the payment of Seventeen, and 56/100 (\$17.56) Dollars, or two weeks, rent upon delivery. The agreement provided that the agreement may be renewed on a weekly basis thereafter by the payment of Seventeen and 55/100 (\$17.55) Dollars on Saturday of each week. The agreement also provided that Rent City would transfer ownership of the property to the debtor at the debtor's sole election if the debtor chose to renew the agreement for 78 successive weeks. Additionally, the debtor could acquire title to the television at any time within the 78-week period by the payment of 70% of the payments remaining due at the time of the debtor's exercise of this option. The agreement also afforded the debtor the option to terminate the agreement at any time without further obligation or penalty by returning the property in its present condition, fair wear and tear accepted, and by paying all payments owed through the date of return. This provision must be read in conjunction with the lessee's obligation to make a minimum of four (4) weekly payments.

Following the initial payment of Seventeen and 56/100

(\$17.56) Dollars, no further payments were made. The debtor now seeks to value the television at One Hundred and No/100 (\$100.00) Dollars contending that the transaction in question is not a true lease, but a disguised secured transaction or lease intended for security. The plan proposes to pay Rent City the value of its

collateral, One Hundred and No/100 (\$100.00) Dollars as a secured claim and the balance, if any, from the pro rata distribution to the holders of unsecured claims. As of June 12, 1989, the bar date for the filing of claims, Rent City had not filed a claim. Therefore, pursuant to Bankruptcy Rule 3004, the debtor filed a secured claim on behalf of Rent City in the amount of One Hundred and No/100 (\$100.00) Dollars, and the clerk issued appropriate notice to Rent City of the claim filing. As of the date of hearing on confirmation and motion for relief from stay, no proof of claim was filed by Rent City.

The issue is whether the lease-purchase agreement is a "true lease" triggering the provisions of 11 U.S.C. §365, or whether it is a disguised security agreement and conditional sales contract or lease intended for security thereby allowing the debtor to "cram down" confirmation in accordance with 11 U.S.C. §1325(a)(5). See, In re: Smith; Ch. 13 Case No. 88-41281 (Bankr. S. D. Ga. filed June 23, 1989) (Davis, J.); In re: Huffman, 63 B.R. 737 (Bankr. N.D. Ga. 1986); In re: Martin, 64 B.R. 1 (Bankr. S.D. Ga. 1984).

For purposes of bankruptcy, the term security agreement is defined as an agreement that creates or provides for a security interest. 11 U.S.C. §101(44). Whether a lease constitutes a security interest in bankruptcy depends upon whether the lease constitutes a security instrument under applicable State or local law. See, H.R. Rep. No. 595, 95th Cong., 1st Sess. 314 1977. In this case, the debtor is a resident of Richmond County, Georgia and

Rent City does business in Richmond County. The transaction in question was entered into in the State of Georgia and is subject to Georgia law. The legislature of the State of Georgia has seen fit to enact the Georgia Lease-Purchase Agreement Act which became effective July 1, 1987. Official Code of Georgia Annotated (O.C.G.A.) §10-1-680 et seq. The Georgia Lease-Purchase Agreement Act, provides in part as follows:

(1) "Lease-Purchase Agreement" means an agreement for the use of personal property by a lessee primarily for personal, family, or household purposes, for an initial period of four months or less, that is renewable with each payment after the initial period and that permits the lessee to become the owner of the property. Lease-Purchase Agreements shall not include any of the following:

(A) A lease or agreement which constitutes a credit sale as defined in 12 CFR 22.6(a)(16) and Section 1602(g) of the Truth in Lending Act, 15 U.S.C. §1601 et seq.; . . .

(E) A lease or agreement which constitutes a

retail installment transaction as defined in  
paragraph 10 of Section (a) of Code Section  
10-1-2.

O.C.G.A. §10-1-681.

By this definition, the legislature of the State of Georgia clearly intends to distinguish those transactions that meet this definition from traditional credit sales transactions which are the essence of leases intended for security. Whether the agreement in question is a true lease or lease intended for security must be determined in light of this definition.

In the present case, the agreement is for the use of personal property (a television) by a lessee primarily for personal, family or household purposes (the television set was delivered to the debtor's household and is used by the debtor in her household) for an initial period of four months or less (the initial period under the agreement was two weeks) and permits the lessee to become the owner of the property (after 78 weekly payments title can transferred to debtor). However, the statutory definition also requires that after the initial period, the agreement must be renewable with each successive payment. The agreement now before the court required a minimum of four weekly payments, at least two of which the debtor was obligated to make beyond the initial period of the lease. This obligation to make future payments existed regardless of whether the debtor retained

the property, and this requirement removes the agreement from this definition of a lease purchase agreement. The Georgia legislature has seen fit to define what constitutes a lease-to-own agreement and to identify such agreement meeting that definition as a true lease and not a lease intended for security.

Decisions rendered after enactment of O.C.G.A. §10-1-680 et seq. involving consumer lease purchase agreements are based at least in part on a determination that the agreement in question in each case was a true lease because of compliance with the definitional provision. In re: Smith. supra at p. 6; In re: Huffman, supra at p. 739; In re: Williamson, Chpt. 13 Case No. 88-

11150 at p. 2 (Bankr. S.D. Ga. filed July 14, 1989) (Dalis, J.). In the area of consumer personal property lease purchase agreements the Georgia legislature has seen fit to set forth minimum requirements for such agreements. In this instance, the Georgia code requirements that the agreement be renewable with each payment after the initial period and terminable without penalty [O.C.G.A. §10-1-681 and 685(b)] are stricter than the requirements under prior judicial decisions. See, In re: Wood, 7 B.R. 543 (Bankr. N.D. Ga. 1980).<sup>1</sup> A

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<sup>1</sup>The Wood decision established three elements necessary for determining that a lease is a lease intended for security: 1) there must be an agreement by the lessee to pay the lessor a set amount; 2) the amount must be equivalent to the value of the leased goods; and 3) the lessee must become the owner or have the

legislature may change a principle of law and abrogate decisions made thereunder where in the opinion of the legislature it is necessary for the public welfare. Baumann v. Surha, 145 F.Supp. 617 (1956), aff'd, 352 U.S. 863, 775 S.Ct. 96, 1.L.Ed.2d 73 (1956); U.S. v. United Shoe Machinery Co., 264 F. 138, 151 (E.D. Mo. 1920), aff'd, 258 U.S. 451, 42 S.Ct. 363, 66 L.Ed. 708 (1922); Silver v. Silver, 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed. 221 (1929); Georgia Lions Eye Bank v. Lavant, 255 Ga. 60, 335 S.E.2d 127 (1985).

The Georgia legislature has established that in consumer transactions, in order for an agreement to lease personal property which offers the lessee the opportunity to obtain ownership of the property to be a true lease rather than a lease intended for security, the agreement must comply with O.C.G.A. §10-1-680 et seq. In this case the contract fails that basic requirement. While mere compliance with O.C.G.A. §10-1-680 et seq. does not preclude judicial review of an agreement, initially any inquiry in this area must determine if the agreement complies with applicable state law provisions. As the Georgia legislature has seen fit to define a true lease in a consumer personal property transaction, failure to meet this definition removes the agreement

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option to become the owner of the leased goods; and if any one of the elements is lacking, the lease is not a lease intended as security, but a true lease. Under this standard the lease in question terminable after a four payment minimum would not meet the requirement that the set amount obligated to be paid by the lessee was equivalent to the I value of the leased goods for determination as a lease intended for security.

from consideration as a true lease, leaving only a lease intended for security as applicable. Where, as in this case, the lessee, a consumer, is obligated under the agreement to make payments beyond the initial term on a contract for the use of personal property for personal, family or household purposes which obligation places the agreement outside the definition of a consumer lease purchase agreement under state law, the agreement is a lease intended for security and the creditor's interest is subject to the provisions of 11 U.S.C. §1325(a)(5).

At confirmation hearing, this court conducted an evaluation of the debtor's proposed plan pursuant to 11 U.S.C. §1325(a) and (b) and determined that but for the objection of Rent City, the proposed plan was filed in good faith and not by any means forbidden by law. The court found that the value of property to be

distributed under the plan on account of each allowed unsecured claim was not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7, and that with respect to each allowed secured claim, the plan provided that the holder of such claim would retain the liens securing such and that the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claims was not less than the allowed amount of such claim. The court determined that the debtor could make the payments under

the plan, and comply with the provisions of the plan and that the plan provided that all of the debtor's projected disposable income for a period of not less than three years would be devoted to the plan.

It is therefore ORDERED that the objection of Rent City is overruled and order shall issue confirming the Chapter 13 plan.

Further ORDERED that as the confirmed plan provides for the payment to this creditor the allowed amount of its claim, the motion for relief from stay is denied.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 12th day of December, 1989.

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

IN RE:	*	CHAPTER 13 PROCEEDING
	*	CASE NO. 189-10179
MILDRED LOUISE COLE	*	
HOLLIS	*	
	*	U.S. DISTRICT COURT
Debtor	*	Southern District of Ga.
	*	Filed in office
AMERICAN LEASING, INC.	*	2:25 P.M.
d/b/a RENT CITY,	*	March 13, 1990
	*	

Appellant \*  
vs. \*  
MILDRED COLE HOLLIS \*  
CIVIL ACTION  
CV190-016

**ORDER DISMISSING APPEAL**

In the captioned matter the record on appeal was transmitted and docketed on January 23, 1990. The appellant has filed no brief of argument.

The appeal is DISMISSED and any costs are taxed against the appellant.

ORDER ENTERED at Statesboro, Georgia, this 13th day of March, 1990.

DUDLEY H. BOWEN, JR.  
UNITED STATES DISTRICT JUDGE