

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

FILED
at 2 O'clock & 45 min P M
Date 10-14-05

United States Bankruptcy Court
Savannah, Georgia PEB

GENERAL ORDER NUMBER 2005-5

ORDER REGARDING LEASE AND ADEQUATE PROTECTION PAYMENTS

11 U.S.C. § 1326(a) provides that Chapter 13 debtors shall make certain payments "directly" to certain lessors or creditors, "unless the Court orders otherwise."

After due consideration the Court enters this Order for the purpose of permitting debtors in their Plan to elect whether to (1) remit those payments "directly" or (2) remit those payments to the Trustee, earmarked for the purpose set forth by Congress.

This action is based in part upon the following considerations and is authorized by § 1326 and § 105:

1. Judicial Economy. No mandatory provision, either allowing or prohibiting these payments to be handled by the Chapter 13 Trustee, can possibly meet the particular needs of every case. Failure to order in advance that debtors may elect the method most likely to permit their Plans to succeed will inevitably lead to countless motions to obtain this permission on a case-by-case basis, consuming untold hours of judicial and administrative resources and driving the cost of Chapter 13 proceeds to debtors, creditors, and counsel higher than can be justified.
2. Record-keeping and Evidentiary Considerations. Chapter 13 Trustees act as fiduciaries, and are uniquely qualified to receive and disburse funds, and to provide reliable records of all such payments. All parties in Chapter 13 cases justifiably rely heavily upon the integrity of these transactions and the records that the Trustee maintains and provides, at no additional cost, to all parties in interest.
3. Creditors' Interests Protected. In the case of adequate protection payments, because debtor's obligation to make these payments is not triggered until a claim is "allowed" and because claims are not "allowed" until filed (§ 502), it may be impossible for a debtor to know when to begin making such payments "directly." Payment to the Trustee of funds estimated to cover these claims will ensure debtors do not become delinquent under this provision simply because they lack any

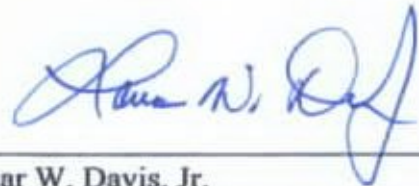
notice of an obligation to commence making them. Creditors rights are preserved under longstanding precedent of this Court. See In re Coplin, 1987 W. L. 61929 (Bankr. S.D.Ga.). Coplin ensures that funds held by a Trustee in a case that is dismissed are held for a sufficient period of time, not expressly provided by the terms of § 1326(a)(2), so as to permit creditors with an interest in those funds to make a claim to them. See also In re Holly, 109 B.R. 524 (Bankr. S.D.Ga. 1989). Holly applied the Coplin decision to Chapter 13 cases in the event of conversion to Chapter 7. Therefore, in the event of either dismissal or conversion of a Chapter 13 case, funds held to provide for adequate protection will be applied to that purpose. The amendments to § 1326 do not negate this precedent.

4. Timely Hearings on Objections. Confirmation hearings will be conducted prior to the deadline for filing claims. As a result, the Court can timely adjudicate any dispute over the amount and method of payment of these claims at confirmation, should a timely objection to the Plan be filed by any creditor.

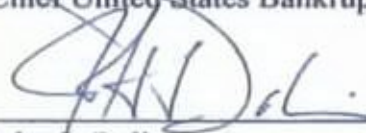
IT IS THEREFORE ORDERED that pursuant to 11 U.S.C. §§ 1326 and 105, commencing October 17, 2005, debtors are authorized to designate in their Chapter 13 Plans whether lease and adequate protection payments shall be made "directly" to the creditor or remitted to the Trustee.

If these payments are remitted to the Trustee they shall be paid to the creditor designated in the Plan after a claim is allowed until confirmation or further order of this Court. Creditor's rights in these funds shall be governed by the terms of a confirmed Plan, further order of Court, or in the case of a dismissal prior to confirmation, remitted to the creditor for whose benefit they were paid by Debtor and held during the pendency of the case.

This 14th day of October, 2005.



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



John S. Dalis
United States Bankruptcy Judge