

In the United States Bankruptcy Court **FILED**

for the

at 12 O'clock & 58 min PM
Date 3/16/01

Southern District of Georgia
Savannah Division

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia *FB*

In the matter of:)	
)	Chapter 13 Case
GRAMS B. OSBORNE)	
)	Number <u>00-40453</u>
<i>Debtor</i>)	

**ORDER ON MOTION TO SET ASIDE
AND AMEND ORDER DENYING CONFIRMATION**

On December 1, 2000, the Debtor, Grams B. Osborne, filed the above-captioned Motion seeking to set aside this Court's November 3, 2000, Order Denying Confirmation and Dismissing Case. The principal reasons stated for seeking relief asserted by the Debtor in his pleadings and at the hearing were twofold: First, the Court failed in its written order to include language finding that the Debtor's case was a "no-asset case" as reflected in the transcript of the hearing. Second, although the Court heard evidence on the Debtor's objection to the claim of Pat Lewis filed in the case, the Court failed to enter any final order on the Debtor's objection. Debtor's Motion is denied for the reasons more fully articulated in this Court's conclusions entered from the bench during the course of the hearing,¹ but can be summarized as follows:

- 1) The Motion is not timely filed, not having been filed within ten (10) days of November 3, 2000, as required by Rule 9023.

¹ For a procedural history of this case see *In re Osborne*, Ch. 13 Case No. 00-40453 (S.D.Ga. Mar. 14, 2001). This order appears in the case file as document number 84.

2) Even if timely, the Motion is spurious. The reference in the transcript to the Debtor's case being a "no-asset" case was not a critical or necessary finding with regard to the issue of denial of confirmation, and was only one of numerous elements which entered the Court's analysis in determining whether to dismiss the Debtor's case or convert it to a Chapter 7 liquidation. While the Debtor apparently wishes some editorial input into the language that the Court utilized in its Order, its inclusion or omission is completely and entirely immaterial.

3) Upon the Court's determination that confirmation would be denied and the case would be dismissed, the Debtor's objection to the claim of Pat Lewis was rendered moot. In particular, the contention that the judgment lien held by Pat Lewis should be stripped, rendering the Pat Lewis claim unsecured, is a result available to a debtor only under 11 U.S.C. § 522 and not as a matter of state law. Since there remains no bankruptcy case under administration, the issue of the status of the Lewis claim is moot.

IT IS THEREFORE THE ORDER OF THIS COURT that Debtor's Motion is Denied.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 15th day of March, 2001.