

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Shainna L. Charlton,

Debtor(s).

C/A No. 20-04050-HB

Chapter 13

ORDER DENYING CONFIRMATION

THIS MATTER came before the Court to consider confirmation of the Chapter 13 plan filed by Debtor Shainna L. Charlton, and the objection filed by Creditor Linda F. Skinner. Present at the February 4, 2021 hearing were Charlton and her counsel, V. Lee Ringler, Skinner and her counsel, Michael H. Weaver, and Chapter 13 Trustee, Wm. Keenan Stephenson.

FACTS

1. Charlton and Skinner agreed to a written one-year Residential Rental Agreement for the lease of 381 Old Walnut Branch, North Augusta, SC 29860, beginning November 1, 2013. The lease provides rent of \$1,050.00 is due on the first day of each month and a late fee of \$5.00 per day is charged if Charlton fails to pay rent after the fifth day of the month. The lease provides:

With thirty (30) days written notice . . . either party may terminate this agreement at the end of the initial term, but if no notice is given, then the agreement will be extended on a month-to-month basis on the same terms and conditions contained in this agreement. Thirty (30) days written notice by either party is required prior to termination during such month-to-month terms.

The lease also provides that Charlton agreed to pay the first and last months' rent prior to occupancy. "The payment of the last months rent is in lieu of a security deposit and is non-refundable. Total rent due prior to occupancy is \$2,100.00."

2. On December 18, 2015, Charlton filed a petition for Chapter 13 relief, with Ringler as counsel, C/A No. 15-06716-jw. The petition disclosed Charlton previously filed for bankruptcy relief in Georgia in March 2004, C/A No. 04-11079. Her Schedule J stated she lived with her two

children and her monthly rent was \$1,050.00. Charlton's plan was confirmed on February 25, 2016, but that case was dismissed on September 14, 2016, for failure to make plan payments.

3. On September 20, 2016, Charlton filed a petition for Chapter 7 relief, also with Ringler as her counsel, C/A No. 16-04756-hb. The Chapter 7 trustee declared it a no-asset case and Charlton received a discharge on December 28, 2016.

4. On August 31, 2019, Charlton filed a petition for Chapter 13 relief, with Joseph E. Mitchell, III, as her counsel, C/A No. 19-04649-hb. Charlton's plan was confirmed on November 21, 2019. The plan did not mention the Skinner lease, but the standard terms of the Chapter 13 plan provided all executory contracts and unexpired leases were rejected unless otherwise indicated. This case was dismissed on February 18, 2020, for failure to make plan payments.

5. In each of the aforementioned cases filed in South Carolina, Charlton did not include the lease with Skinner on Schedule G or otherwise schedule Skinner as a creditor.

6. On October 30, 2020, Charlton filed a petition for Chapter 13 relief with Ringler as her counsel. Charlton listed 420 Old Walnut Branch, North Augusta, SC 29860 as her residence on the petition and disclosed in the Statement of Financial Affairs that she lived at 381 Old Walnut Branch from October 2013 until August 2016. Charlton's Schedule G included Skinner and acknowledged a month-to-month lease with prepetition arrears of approximately \$7,600.00. Her Schedule J states she lives with her children and boyfriend and her monthly rent is \$1,200.00, but also explained "I'll [sic] living with parents temporarily until we can get our own place."

7. Upon the motion of Charlton and without any objection, the automatic stay was extended pursuant to 11 U.S.C. § 362(c)(3)(B). Apparently as a condition of confirmation, Charlton entered a consent order with the Trustee providing that due to prior dismissals, if this case is converted or dismissed for any reason within 12 months of the commencement of the case,

Charlton is barred from filing a petition under any reorganization Chapters of the Bankruptcy Code for a period of one year.

8. Skinner filed a proof of claim asserting an unsecured claim of \$6,580.00 from prepetition rental arrears. Skinner testified that this amount was calculated after application of the \$2,100.00 provided by Charlton for first and last months' rent when the lease was entered.

9. Charlton's Chapter 13 plan filed October 30, 2020, proposes to make monthly payments to the Trustee of \$995.00 for sixty months with a distribution of less than 100% to general unsecured creditors. The plan specifically provides Charlton will assume her month-to-month lease and the "[c]urrent installment payment will be disbursed directly by the debtor Prepetition arrearage payments will be disbursed by the trustee . . ." in the amount of \$190.00 or more. Based on Skinner's proof of claim and information provided at the hearing, the prepetition arrearage would be cured after approximately 35 months.

10. The parties agree the initial term of lease expired prepetition and the lease has extended on a month-to-month basis.

11. Charlton testified that although she temporarily lived at 420 Old Walnut Branch in the past as she was going through a spousal separation, listing it as where she lives on this petition was a clerical error resulting from information from prior filings carrying forward to papers prepared in this case. Charlton testified she currently lives at 381 Old Walnut Branch with her two children and boyfriend.

12. Shortly before the hearing on January 28, 2021, Charlton filed an amended petition to indicate her residence is 381 Old Walnut Branch. Amended Schedules I and J were also filed that removed another debtor or non-filing spouse from Schedule I; corrected Charlton's monthly rent expense to \$1,050.00; removed a car payment of \$450.00; removed an alimony, maintenance,

or support payment of \$390.00; and removed the explanation that she temporarily lives with her parents. The evidence indicates these changes were to correct the initial filing and did not reflect postpetition changes in circumstances.

13. Charlton is a teacher and her Amended Schedule I indicates she has a monthly net income of \$5,692.45, of which \$1,500.00 is contributed by her boyfriend from his landscaping business. Including \$1,050.00 for rent, her scheduled monthly expenses are \$3,726.00, resulting in \$1,966.45 monthly net income.¹

14. Although her budget indicates net income available to make her plan payment of \$995.00, even after payment of rent to Skinner, Charlton has not made any postpetition rent payments during the four months this case has been pending. Charlton testified that unexpected bills and necessary car repairs prevented her from paying the postpetition rent. However, details of the amounts in question did not account for the failure to pay at least some portion of the rent.

15. Charlton's budget relies on net contributions of \$1,500.00 per month from another resident of the rental property. However, there was no evidence that this amount has actually been contributed since filing and he is not a party to the lease or otherwise obligated to make payments to Skinner.

16. Charlton testified she can make the past-due February rent payment when she receives her next paycheck on or about February 19, 2021, and can make another payment two weeks later, along with extra payments to catch up postpetition arrears.

17. Trustee represented that Charlton is substantially current on her plan payments as he received two of three payments, Charlton agreed for her plan payments to be automatically deducted from her paycheck, and there is generally a delay from the employer when this

¹ According to the figures included on her initial Schedules I and J, Charlton's net monthly income was \$976.45, which took into account a \$1,200.00 monthly rent payment.

arrangement begins. Trustee stated his belief that, based on the budget filed, the plan should be feasible.

18. Charlton's counsel argued that the effects of the pandemic should be factored into the Court's decision. However, there was no evidence that event has played a measurable role in this case or that special consideration should be made as a result thereof.

19. Skinner testified that she is a retired teacher on a fixed income and relies on rent from the property in question. Her testimony indicated a long-term landlord/tenant relationship where the parties cooperated even when payments were missed or late. However, on these facts, she is not willing to accept the terms of the plan.

DISCUSSION AND CONCLUSIONS

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L), and this Court may enter a final order.

“Debtor has ‘the burden of proving by a preponderance of the evidence that [her] plan meets the confirmation requirements of § 1325(a) . . .’” *In re Martellini*, 482 B.R. 537, 541-42 (Bankr. D.S.C. 2012) (quoting *In re Bridges*, 326 B.R. 345, 349 (Bankr. D.S.C. 2005)). Section 1325(a) requires that “the plan complies with the provisions of this chapter and with the other applicable provisions of this title.” 11 U.S.C. § 1325(a)(1). Pursuant to § 1325(a)(6), a Chapter 13 plan cannot be confirmed unless it is feasible. That section specifically provides the Court shall confirm a Chapter 13 plan if “the debtor will be able to make all payments under the plan and comply with the plan.” 11 U.S.C. § 1325(a)(6).

“For purposes of this section 365 . . . leases of real property shall include any rental agreement to use real property.” 11 U.S.C. § 365(m). Section 365 provides a lease on which there

has been a default may not be assumed unless the debtor meets the following requirements: (1) cure the default or provide adequate assurance that the default will be promptly cured; (2) compensate or provide adequate assurance that debtor will promptly compensate the other party for any pecuniary loss resulting from the default; and (3) provide adequate assurance of future performance under the lease. 11 U.S.C. § 365(b)(1).

The determination of whether a cure is prompt is determined on a case by case basis. In making this determination, bankruptcy courts have considered the following: (1) nature of leased property, (2) provisions of lease, (3) amount of arrearage under the lease, (4) remaining term of lease, and (5) provisions of debtor's proposed plan.

In re Randolph, C/A No. 06-03729-jw, slip op. at 1 (Bankr. D.S.C. Oct. 27, 2006) (citing *In re Reed*, 226 B.R. 1, 2 (Bankr. W.D. Ky. 1998)).

Although 381 Old Walnut Branch is Charlton's residence, the lease in question is a month-to-month tenancy and the plan proposes to assume whatever contractual rights she has while curing the substantial prepetition arrears of approximately six months' rent over the course of almost three years. The plan also provides Charlton must directly pay postpetition rent to Skinner in addition to the plan payment. Although the budget filed with the Court indicates the ability to do so, Charlton has failed to pay all postpetition rent. As of the hearing date, Charlton did not have funds in reserve to pay even the current month's rent and her testimony did not convince the Court of any significant change that would alter that course consistently. The Court finds Charlton's performance since filing more credible than the written budget. The lack of payment and uncertainty regarding future payment not only affect feasibility of the plan, but also negate a finding that Charlton has provided adequate assurance to Skinner that the rent will be paid and other lease obligations will be met going forward. Further, she does not have a sufficient proposal to cure postpetition arrears or promptly cure prepetition arrears. Thus, Charlton's plan fails to meet


the requirements for confirmation under § 1325(a)(1) and (6) and confirmation of the Chapter 13 plan filed on October 30, 2020, is denied.

AND IT IS SO ORDERED.

**FILED BY THE COURT
02/08/2021**



Entered: 02/08/2021


Chief US Bankruptcy Judge
District of South Carolina