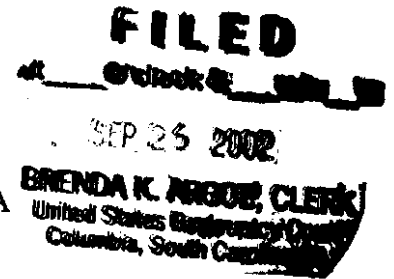


UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA



IN RE:

Jerry Lee Robey,

Debtor.

C/A No. 01-09799-W

JUDGMENT

Chapter 13

Based on the Findings of Fact and Conclusions of Law as recited in the attached Order, the Court sustains Bank One's Objection and confirmation of Debtor's Plan is denied. Debtor has fifteen days to amend his Chapter 13 Plan.

Columbia, South Carolina,
September 26, 2002.


UNITED STATES BANKRUPTCY JUDGE

ENTERED
SEP 26 2002
C.H.B.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the district of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below for:

SEP 25 1982

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

CONNIE H. BROOKS
Deputy Clerk

+ MORIS
Atty - Eby

ENTERED

SEP 26 2002

C.H.B.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

at ___ O'clock & ___ min

SEP 26 2002

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (28)

IN RE:

Jerry Lee Robey,

Debtor.

C/A No. 01-09799-W

ORDER

Chapter 13

THIS MATTER comes before the Court for hearing on the Objection to confirmation of Jerry Lee Robey's ("Debtor") plan filed by Bank One/Valley National Financial Services ("Bank One"). The parties agree that Bank One leased a 1998 Dodge truck to Debtor by a Motor Vehicle Lease Agreement dated August 17, 1998 and that the relationship between the parties is a true lease. At the hearing, Debtor indicated that he intends to amend his Plan to treat the debt to Bank One as a lease, as opposed to a disguised sale, and to provide for assumption of the lease pursuant to 11 U.S.C. §365.¹ However, Debtor argues that he can exercise the option to purchase found in Section 20 of the lease and pay the option purchase price over the term of his Chapter 13 Plan. Bank One argues that Debtor must pay the option price in a lump sum at the time he exercises the option according to the language of the lease. The lease provides in pertinent parts:

Section 20. OPTION TO PURCHASE

- A. **END OF LEASE TERM.** If the Lease has not been terminated and all payments and monies due under the terms of the Lease have been paid, you will have the option to purchase the Vehicle at the end of the Lease Term for the sum of: (1) the Residual Value; **plus** (2) a Purchase Option

¹ Further references to the Bankruptcy Code shall be by section number only.

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Fee of \$250; **plus** (3) any official fees, taxes and other charges related to purchase of the Vehicle; **plus** (4) any amounts necessary to prepare the Vehicle to conform with the legal requirements for sale.

Debtor asserts that the language of the lease does not require that the option price be paid in cash as a lump sum and further that, when he inquired, Bank One indicated a willingness to finance the option price unless the Debtor had filed bankruptcy.

Examining the language of the lease, the Court finds that the only reasonable interpretation indicates that the intent of the parties at the time of entering the lease was for the option price to be paid in a lump sum in cash at the time of the exercise of the option. There is no language that commits Bank One to accept installments or to finance the purchase price over time.

It is well settled that in assuming a lease a debtor takes its burdens as well as its benefits and cannot pick and choose parts of the lease to which he or she will adhere. The opportunity to purchase the vehicle in this case arises from the lease relationship and that portion of the agreement cannot be separately treated as a sales agreement even if the lease term has ended. Therefore, the Court concludes that if the lease is assumed, Debtor cannot pay the purchase price in installments over the term of his plan but must pay the option price at the time of electing the option as required by the lease.

Such a ruling is further supported by other cases which have considered this issue. See In re Pellegrino, 205 B.R. 479 (Bankr. E.D. Pa. 1997), In re Weske, 203 B.R. 694 (Bankr. E.D. Wisc. 1996), In re Jackson, 105 B.R. 418 (Bankr. S.D. Oh. 1989).

The Court therefore sustains Bank One's Objection and confirmation of Debtor's Plan is

denied. Debtor has fifteen days to amend his Chapter 13 Plan.

AND IT IS SO ORDERED.

Columbia, South Carolina,

September 26, 2002.


UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

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Bankruptcy Court for the district of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

SEP 10 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE +

CONNIE H. BROOKS

Deputy Clerk

mov's atty - Eloff