

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

O'clock & min. M

OCT 26 2006

United States Bankruptcy Court
Columbia, South Carolina (19)

IN RE:

C/A No. 06-03729-JW

Kenneth Benard Randolph and Lelia Mae
Randolph,

Chapter 13

JUDGMENT

Debtor(s).

Based on the Findings of Fact and Conclusions of Law made in the attached Order of the Court, Action Finance Company, Inc.'s ("Action") objection to confirmation of Debtors' proposed chapter 13 plan is sustained and confirmation of Debtors' plan is denied. Debtors must cure all arrearage owed to Action within 12 months if they wish to assume their executory contract with Action. Debtors shall submit an amended chapter 13 plan, consistent with the Order, within ten (10) days from the entry of the Order.

Columbia, South Carolina
October 26, 2006


UNITED STATES BANKRUPTCY JUDGE

ENTERED

OCT 27 2006

L. G. R.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Kenneth Benard Randolph and Lelia Mae
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Debtor(s).

C/A No. 06-03729-JW

Chapter 13

ORDER

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L. G. R.

This matter comes before the Court for confirmation of Kenneth Benard Randolph's and Lelia Mae Randolph's ("Debtors") chapter 13 plan. Debtors' plan proposes to assume an executory contract with Action Finance Company, Inc. ("Action") and cure the arrearage owed to Action over the duration of Debtors' proposed 57 month plan. Action objects to confirmation on grounds that Debtors' plan does not provide a prompt cure of the arrearage pursuant to 11 U.S.C. § 365(b)(1)(A).

To assume an executory contract, Debtors must cure any default or provide adequate assurance that any default will be promptly cured, compensate Action for any actual pecuniary loss resulting from the default under the contract, and provide adequate assurance of future performance. See 11 U.S.C. § 365(b). 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. See In re Reed, 226 B.R. 1, 2 (Bankr. W.D. Ky. 1998).

In this case, Debtors' contract with Action involves the purchase of real estate on which Debtors now reside. There is no evidence in the record as to the duration of the contract or as to particular terms of the contract. Debtors' plan indicates that the arrearage owed to Action is in

excess of \$3,500.00 and it appears that Debtors' are contractually due for the March, 2006 payment. Despite the fact that the subject property is Debtor's residence, previous courts that have considered the issue have generally found that a cure of more than a year is not prompt under § 365(b). See Reed, 226 at 2 (rejecting an 18 month cure); In re Yokley, 99 B.R. 394 (Bankr. M.D. Tenn. 1989) (rejecting a proposed two year cure to cure arrearage owed on debtor's lease of her residence); In re Trusty, 189 B.R. 977 (Bankr. N.D. Ala. 1995) (allowing debtor's one year to cure a rent-to own agreement); In re Morgan, 181 B.R. 579 (Bankr. N.D. Ala. 1994) (establishing 6 months as the rule of thumb for a prompt cure of a residential lease). Based on the facts of this case, the Court finds that a 57 month cure is not a prompt cure of the arrearage owed to Action and that Debtors must cure all arrearage owed to Action within 12 months if they wish to assume the contract with Action.

Therefore, Action's objection to confirmation is sustained and confirmation of Debtor's plan is denied. Debtors shall submit an amended chapter 13 plan, consistent with this Order, within ten (10) days from the entry of this Order.

AND IT IS SO ORDERED.

Columbia, South Carolina
October 26, 2006


UNITED STATES BANKRUPTCY JUDGE