




SO ORDERED.

SIGNED this 10 day of December, 2018.

  
Joseph N. Callaway  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION**

**IN RE:**

**SHELBY MEGHAN THOMPSON-MASSIE**

**DEBTOR**

**CASE NO.  
18-04263-5-JNC  
CHAPTER 13**

**ORDER REGARDING OBJECTION TO CONFIRMATION**

The matter before the court is the Objection to Confirmation filed by the chapter 13 trustee on November 13, 2018 (D.E. 13; the "Objection"), and the Response in Opposition filed by the debtor, Shelby Thompson-Massie (the "Debtor"), on November 27, 2018, (D.E. 15; the "Response"). A hearing was noticed for and held on November 29, 2018 in Fayetteville, North Carolina. Joseph A. Bledsoe, the chapter 13 trustee, and counsel for the debtor, Lee Roland IV, appeared at the hearing.

Shelby Thompson-Massie filed a petition for relief under chapter 13 on August 27, 2018 (D.E. 1), along with her proposed chapter 13 plan (D.E. 2). The Debtor utilized the standard chapter 13 plan form required for use in this district, E.D.N.C. Local Form 113A. However, in Part 9.1, "Nonstandard Plan Provisions," the Debtors inserted the following language:

The Debtor hereby exercises the statutory right under 11 U.S.C. § 1322(b)(7) to provide for the assumption or rejection of executory contracts and unexpired leases by including in this Chapter 13 Plan, as specifically set forth in Section 5.1, as opposed to by motion, notwithstanding the language to the contrary set forth in Section 5.1, which language purports to require the filing of a motion.

See Debtor's Chapter 13 Plan (D.E. 2), Section 9.1.

Through Section 9.1, the Debtor is attempting to override the effect of Section 5.1 of Local Form 113A, which states:

Such rejection and/or assumption of executory contracts and unexpired leases shall not be accomplished in this district in the absence of the filing and proper service of a motion and notice of motion specifically seeking such relief and giving the affected creditor the opportunity to object to the motion and request a hearing.

See Debtor's Chapter 13 plan (D.E. 2), Section 5.1.

Section 5.1 of Local Form 113A manifests this court's General Order of May 22, 2018 (the "General Order") by requiring the filing of an independent motion under 11 U.S.C. § 365 to assume or reject an executory contract. The Debtor maintains that an independent Section 365 motion is not necessary in chapter 13 cases because of 11 U.S.C. § 1322(b)(7), which states that a chapter 13 plan may ". . . provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under . . . section [365]." Thus, by operation of her proposed chapter 13 plan (if confirmed), and without independent motion, the Debtor here seeks to assume an unexpired lease with Graceland Properties, LLC.<sup>1</sup>

The Trustee objected to plan confirmation because the non-standard plan provision from Section 9.1 as quoted above would, if permitted, obviate Local Form 113A, Section 5.1. In essence, non-compliance would become compliance notwithstanding the General Order's requirement of an independent motion. The Debtor, however, responds that Section 5.1 is inconsistent and in conflict with the specific wording of the Bankruptcy Code at Section 1322(b)(7). She acknowledges that, if permitted by the corresponding district court, bankruptcy courts are authorized to institute and enforce local rules of practice and procedure, but "a local rule of bankruptcy procedure cannot be inconsistent with the Bankruptcy Code." *No v. Gorman*, 891 F.3d 138, 141 (4th Cir. 2018); *see also* Fed. R. Bankr. P. 9029(a)(1). Because Section 5.1 of Local Form 113A appears to be in direct contravention of the language of 11 U.S.C. § 1322(b)(7), the Debtor concludes that requiring a separate assumption motion per Section 5.1 is impermissible.

The Debtor's point is well taken, and the court agrees that Section 5.1 of Local Form 113A squarely conflicts with the plain language of Section 1322(b)(7). Further, because the Debtor's language in her Section 9.1 put the other party to the unexpired lease on notice that the lease would be assumed notwithstanding the limiting language of Section 5.1, and the property company did not respond, due process requirements are met, and it is presumed that Graceland Properties, LLC consents to the assumption of the unexpired lease.

There being no other objections to the Debtor's proposed chapter 13 plan, it can be confirmed.<sup>2</sup>

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<sup>1</sup> The Response clarifies that the unexpired lease is a forty-eight (48) month rental purchase agreement for a 10 foot by 12 foot barn.

<sup>2</sup> The court will separately consider what steps, if any, may be necessary to bring Local Form 113A and the General Order into compliance with 11 U.S.C. § 1322(b)(7).

IT IS THEREFORE ORDERED AND DECREED that:

- A. The Objection of the Trustee is overruled.
- B. The Chapter 13 plan of Ms. Thompson-Massie as filed and served complies with the necessary provisions of the Bankruptcy Code with respect to unexpired lease assumption.
- C. A separate plan confirmation order will be entered in the case.

**END OF DOCUMENT**