

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT



In re:

**Meloney Lepri,  
Debtor.**

**Chapter 13 Case  
# 04-10297**

*Appearances:*

*Kathleen Walls, Esq.  
Middlebury, VT  
Attorney for the Debtor*

*Robert S. DiPalma, Esq.  
Paul, Frank & Collins  
Burlington, VT  
Attorney for the Creditor*

**ORDER SUSTAINING CREDITOR'S OBJECTION TO CONFIRMATION  
AND GRANTING RELIEF FROM STAY**

***A. Rent N Go's Objection to Confirmation***

On March 3, 2004, the Debtor, Meloney Lepri, submitted her proposed chapter 13 plan (the "Plan"). See doc. #2. On March 12, 2004, Creditor Rent N Go, Inc. ("Rent N Go") objected to the Plan on the ground that it improperly sought to treat Rent N Go as an undersecured creditor and cram down its claim. See doc. #8. At issue are four rental agreements ("the Agreements"), which the Debtor treats as creating security interests pursuant to 9A V.S.A. § 1-201(37), but which Rent N Go argues are "rent-to-own" agreements pursuant to 9 V.S.A. § 41b(a). The Debtor filed a Response to Rent N Go's Objection, see doc. #10, maintaining her position that the Agreements are disguised security agreements. The Debtor has raised a strong argument that the Agreements are not leases, but instead are disguised security agreements, in reliance upon Vermont statutes, case law, and the Debtor's intent.

On April 8, 2004, at the conclusion of the combined hearing on confirmation of the Debtor's Plan and on Rent N Go's Motion for Relief from Stay, this Court asked the parties to address In re Catamount Dryers, Inc., 43 B.R. 564 (Bankr. D. Vt. 1984) (Marro, J.), which holds that whether an agreement is a lease or a security agreement is to be determined by the facts of each case, the parties' subjective intent, and U.C.C. §§ 9-102(1)(a), 1-201(37). However, the Court subsequently notified the parties that it did not need them to file supplemental papers.

In 1993, the Vermont Legislature passed 9 V.S.A. § 41b(a), which this Court finds to govern the outcome of the parties' dispute. Section 41b(a) of Title 9 of the Vermont Statutes Annotated provides, in pertinent part:

An agreement that complies with this article is not a retail installment sales contract, agreement or obligation as defined in this chapter *or a security interest as defined in section 1-201(37) of Title 9A.*

(emphasis added). The Court finds Rent N Go has complied with the provisions of 9 V.S.A. § 41b(a). Therefore, this Court, bound by strictures of 9 V.S.A. § 41b(a), is compelled to find the Agreements cannot be treated as security agreements. In turn, this Court is required to sustain Rent N Go's objection to its treatment in the Debtor's Plan. The Debtor has no right to treat Rent N Go as an undersecured creditor whose interests can be crammed down.

***B. Rent N Go's Motion for Relief from Stay***


Rent N Go also moved this Court for relief from stay on the same day as it filed its Objection to Confirmation. See doc. #9. The Debtor filed an Objection to Rent N Go's Motion for Relief from Stay. See doc. #10. Rent N Go argues that the payment term of each of the Agreements was weekly and that if those Agreements were not renewed, then they were deemed terminated. In her Objection, the Debtor acknowledges that she did not make payments required under the Agreements for the 13 to 17 weeks prior to filing her bankruptcy petition. See Objection at ¶¶3(a)-(d). Based upon the record before it, the Court is bound to find that the Agreements were terminated. As such, the Debtor no longer has any rights in the properties leased under the Agreements. Hence, Rent N Go is entitled to relief from the automatic stay. Accordingly,

**IT IS HEREBY ORDERED** that Rent N Go's objection to confirmation of the Debtor's Plan is SUSTAINED. The Debtor is directed to amend her Plan to reflect this Court's ruling on Rent N Go's Objection within two weeks of the date of this Order.

**IT IS FURTHER ORDERED** that the automatic stay instituted upon the filing of the instant bankruptcy case is hereby modified pursuant to 11 U.S.C. § 362(d)(1) as to Rent N Go's interest in the properties identified in the four subject Agreements to the extent that Rent N Go is free to pursue applicable non-bankruptcy law remedies with respect to its interests.

**SO ORDERED**

May 4 , 2004  
Rutland, Vermont

  
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Colleen A. Brown  
United States Bankruptcy Judge