

**FILED**

DEC 13 2005

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:	)	Chapter 13
MARISOL C. LOPEZ	)	No. 4-04-bk-00002-JMM
Debtor.	)	Adversary No. 4-05-ap-00190-JMM
SANDRA MINJAREZ,	)	<b>MEMORANDUM DECISION</b>
Plaintiff,	)	(Opinion to Post)
vs.	)	
MARISOL C. LOPEZ,	)	
Defendant.	)	

The Debtor filed a chapter 13 proceeding on January 2, 2004. Two months later, she rented a home from Sandra Minjarez. Thinking she also had a sale contract, Debtor tendered a \$5,000 down payment over time.

However, the Debtor also became delinquent on her rental payments, over a nine-month period, of \$8,449.02.

The court determined that there never was a binding sale contract relative to the real property. Thus, the legal issue is: Who gets the \$5,000?

The court finds a valid right to an offset exists, and that Sandra Minjarez may retain it in reduction of her post-petition rental payments. This post-petition obligation to make rental payments is not an item that is included, or includable, within a chapter 13 plan. It simply becomes a Schedule J expense item that the Trustee uses to measure a plan's feasibility. An asset was not created which can be used to satisfy plan obligations.

1 Therefore, the landlord, Sandra Minjarez, may apply that \$5,000 payment toward  
2 repayment of her unpaid rent.

3 A separate judgment will be entered.

4  
5 DATED: December 13, 2005.

6  
7   
8 JAMES M. MARLAR  
UNITED STATES BANKRUPTCY JUDGE

9 COPIES served as indicated below this 13  
10 day of December, 2005, upon:

11 Dean Loren Axelrod  
12 Law Office of Dean Axelrod, PLC  
2730 E. Broadway, #160  
Tucson, AZ 85716  
Email: [dean.axelrod@azbar.org](mailto:dean.axelrod@azbar.org)

13 Eric Ollason  
14 182 N. Court Ave.  
Tucson, AZ 85701  
15 Email [eollason@182court.com](mailto:eollason@182court.com)

16 George D. Carroll  
252 W. Ina Rd., Suite 203  
17 Tucson, AZ 85704-0001  
Email [gdcarroll@dcktrustee.com](mailto:gdcarroll@dcktrustee.com)  
18 Attorney for Chapter 13 Trustee

19 Dianne C. Kerns  
7320 N. La Cholla #154  
20 PMB 413  
Tucson, AZ 85741-2305  
21 Email [andrea.hopkins@dcktrustee.com](mailto:andrea.hopkins@dcktrustee.com)  
Chapter 13 Trustee

22 Office of the United States Trustee  
23 230 North First Avenue, Suite 204  
Phoenix, AZ 85003-1706  
24 U.S. Mail

25  
26 By   
Judicial Assistant