

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 06-10348-JMD

Chapter 7

Robert J. Reardon, Jr.,
Debtor

MEMORANDUM OPINION

I. INTRODUCTION

Robert J. Reardon, Jr. (the “Debtor”) has filed a motion to approve a reaffirmation agreement (Doc. No. 13) (the “Motion”). The motion includes a reaffirmation agreement (the “Reaffirmation Agreement”) substantially in the form of Revised Procedural Form B240 issued by the Director of the Administrative Office of the United States Courts to implement the requirements of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8 (“BAPCPA”).

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. FACTS

The Reaffirmation Agreement is in the form required in this district by Administrative Order (“AO”) 4008-1. As required by AO 4008-1, the Reaffirmation Agreement includes a copy of a retail installment contract between the Debtor and Allen Mello Dodge, Inc. (the “Installment Contract”). The Reaffirmation Agreement also includes a copy of a certificate of title issued by

the State of New Hampshire (the “Title Certificate”) for the motor vehicle described in the Reaffirmation Agreement. The Title Certificate indicates that the Debtor is the owner of the motor vehicle and that Chase Manhattan Bank USA NA is the lien holder.

III. DISCUSSION

BAPCPA amended the provisions of § 524 of the Bankruptcy Code with respect to reaffirmation agreements for consumer debts in cases filed on or after October 17, 2005. This case was filed on April 7, 2006. Accordingly, the provisions of BAPCPA regarding reaffirmation of consumer debts apply in this case.

In order for the Reaffirmation Agreement to be enforceable it must have been entered into before the granting of a discharge to the Debtor under § 727 of the Bankruptcy Code and the disclosures required under § 524(k) must have been made at or before the time the Debtor signed the agreement. 11 U.S.C. § 524(c). In addition, the Bankruptcy Code requires that the Reaffirmation Agreement be filed with the Court and, on the facts of this case, that the Court determine, after a hearing at which the Debtor appears, that the Reaffirmation Agreement does not impose an undue hardship on the Debtor. 11 U.S.C. § 524(c) and (d).

The Reaffirmation Agreement was executed individually by the Debtor and “C.E. Calloway.” The Reaffirmation Agreement recites that “JP Morgan Chase Bank, N.A. or Chase Bank USA, N.A.” has a security interest in the motor vehicle described in the Reaffirmation Agreement. However, the Title Certificate attached to the Reaffirmation Agreement shows another lien holder, “Chase Manhattan Bank USA NA.”

As required by § 524(k)(3), the Reaffirmation Agreement advises the Debtor of his right to rescind the Reaffirmation Agreement at any time before the Court enters a discharge order or

before the expiration of the 60-day period that begins on the date the Reaffirmation Agreement is filed with the Court, whichever occurs later. Any such rescission must be completed by the Debtor notifying the creditor. 11 U.S.C. § 524(k)(3). However, the Reaffirmation Agreement does not contain any indication of the identity of the creditor to whom notice of rescission should be given or any address to which such notice could be delivered. Therefore, the Reaffirmation Agreement does not comply with the requirements of § 524(k)(3).

AO 4008-1 requires the use of the proscribed form in order to insure compliance with the requirements of § 524, as revised by BAPCPA. AO 4008-1(a). In addition to the use of the required form, AO 4008-1 requires that a reaffirmation agreement be “accompanied by the best available evidence of the claim and, as appropriate, copies of the underlying contractual agreement.” AO 4008-1(b)(2). The Installment Contract filed with the Reaffirmation Agreement is not an agreement between the Debtor and the person signing the Reaffirmation Agreement, C.E. Calloway, or with Chase Manhattan Bank USA NA, the lien holder on the Title Certificate, but rather the Installment Contract is an agreement between the Debtor and Allen Mello Dodge, Inc. Accordingly, without more, the Installment Contract simply is not evidence of any claim or agreement between the parties to the Reaffirmation Agreement nor evidence supporting the security interest of Chase Manhattan Bank USA NA, the lien holder on the Title Certificate.

Given the evidence before the Court in the form of the Reaffirmation Agreement, the Installment Contract, and the Title Certificate, there is simply no way for the Court, the Debtor or any other person to determine what agreement has been reaffirmed, the terms of such agreement or the identity of the creditor who has entered into the agreement. If “C.E. Calloway” is the creditor, then he or she needs to attach documentation evidencing the claim or evidencing the assignment of the Installment Contract to him or her. If the Reaffirmation Agreement is between

the Debtor and a corporation or other entity, that agreement needs to be executed by the entity in the manner prescribed by applicable non-bankruptcy law. The Reaffirmation Agreement filed with the Court is simply too vague, uncertain, and contradictory to constitute an enforceable agreement.

Although the Reaffirmation Agreement is on in the form required by AO 4008-1, it has not been completed properly. In addition, either the Reaffirmation Agreement has not been properly executed by the lien holder of the motor vehicle that is the collateral for the loan or the documentation necessary to establish that the person executing the Reaffirmation Agreement is the holder of the claim and the security interest in the motor vehicle has been omitted. Finally, the Debtor's right of rescission is meaningless unless the disclosures in the Reaffirmation Agreement identify the name and address of the person to whom the Debtor must direct a notice of rescission. Accordingly, the Reaffirmation Agreement does not comply with the requirements of § 524 of the Bankruptcy Code and cannot be approved.

IV. CONCLUSION

This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order that denies the Motion and disapproves the Reaffirmation Agreement.

ENTERED at Manchester, New Hampshire.

Date: May 24, 2006

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge