

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

In re:)
)
Shawn Phillip Bennet and)
Tracy VanHoy Bennett,) **Case No. 06-80241**
)
Debtors.)
_____)

**ORDER AND OPINION DENYING APPROVAL
OF REAFFIRMATION AGREEMENT**

This case came before the court on May 2, 2006 pursuant to § 524 of the Bankruptcy Code for consideration of a reaffirmation agreement between the Debtors, Shawn Phillip Bennet and Tracy VanHoy Bennett, and State Employee’s Credit Union (“the Creditor”) regarding real property located at 235 West Baltimore Ave., Southern Pines, N.C. Mrs. Bennett appeared at the hearing and represented to the court that payments on this account were current at the time of filing and remain current. The court, having reviewed the agreement and the record in this case, including the statements made by Mrs. Bennett, will not approve the reaffirmation agreement.

Prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), a debtor had the right to continue to make payments on a debt that was current and retain the property serving as collateral for that debt, commonly known as a ride-through, in the Fourth Circuit. In re Belanger, 962 F.2d 345 (4th Cir. 1992). In the BAPCPA, however, Congress included language in § 362(h)(1), § 521(a)(6), and § 521(d) designed to limit a debtor’s right to ride-through. First, Section 362(h)(1) provides that the automatic stay terminates “with respect to personal property” when the debtor does not state an intention to reaffirm or redeem, or does not perform such intention within a specified period of time. 11

U.S.C. § 362(h)(1). The language of § 362(h)(1) is specifically limited to personal property and does not apply to real property. Similarly, § 521(a)(6) refers to the debtor not retaining possession of *personal* property as to which a creditor has an allowed claim unless the debtor reaffirms or redeems. 11 U.S.C. § 521(a)(6). Again, this section does not apply to real property. Finally, § 521(d), which is designed to allow creditors to enforce *ipso facto* clauses in certain leases and contracts, limits its application to when a debtor fails to take action as specified in either § 362(h)(1) and § 521(a)(6). 11 U.S.C. § 521(d). Therefore, it too is limited to personal property.

Congress is presumed to enact legislation with knowledge of the law, including knowledge of the interpretation that courts have given to an existing statute U.S. v. Langley, 62 F.3d 602, 605 (4th Cir. 1995). Here, the sections in BAPCPA designed to limit ride-through apply to personal property only, despite the fact that, pre-BAPCPA, ride-through was permitted for both real and personal property in the Fourth Circuit pursuant to Belanger. Congress could have easily made § 362(h)(1) and § 521(a)(6) applicable to both real and personal property, but it chose not to. Thus, the court finds that debtors in this circuit continue to have the right pursuant to Belanger to retain real property without being required to reaffirm or redeem, so long as payments to the creditor are current.

Because the Debtors are entitled retain their real property while they continue to make payments on a debt that is current, this court finds that reaffirming the indebtedness to the Creditor would not be in their best interest. Based upon the foregoing, it is ORDERED that the reaffirmation agreement between the Debtors and the Creditor is not approved and, therefore, shall not be binding upon the Debtors. This Order constitutes notice of rescission by the Debtor

to the Creditor pursuant to § 524(c)(2) of the United States Bankruptcy Code.

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