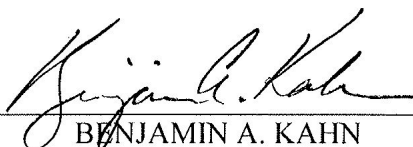


**SO ORDERED.**

**SIGNED this 1st day of April, 2014.**



  
BENJAMIN A. KAHN  
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE:	)	
	)	
Thomas F. Norman and	)	
Jo Ann B. Norman,	)	Case No. 14-80039
	)	
Debtors.	)	
	)	

**ORDER**

This matter came before the Court on March 27, 2014, in Greensboro, North Carolina, for consideration of a reaffirmation agreement between the Debtors and Nissan-Infiniti LT, filed by Nissan Motor Acceptance Corporation on March 10, 2014 [Doc. # 15] (the "Lease Reaffirmation Agreement").

Debtors commenced this case by filing a Voluntary Petition for relief under Chapter 7 of the United States Bankruptcy Code on January 14, 2014 (the "Petition Date"). The Lease Reaffirmation Agreement seeks to reaffirm the Debtors' December 27, 2013 lease of a 2014 Nissan Altima (the "Lease"). The Lease is not attached to the Lease Reaffirmation Agreement, and no Proof of Claim had been filed by the lessor as of the date this matter came on for hearing.

According to the Lease Reaffirmation Agreement Cover Sheet, Debtors have total monthly income of \$5,204.16 and expenses of \$6,147.42, not including additional monthly expenses in the amount of \$326.46 arising out of an additional reaffirmation agreement filed by the Debtors with respect to a Retail Installment Contract dated December 27, 2013 between Debtors and Nissan Motor Acceptance Corporation [Doc. #20] (the “Sale Reaffirmation Agreement”). In addition to the expenses of the Sale Reaffirmation Agreement, the Lease Reaffirmation Agreement proposes a monthly expense of \$294.28, creating a negative monthly net income in the amount of \$1,564.00. Therefore, a presumption of undue hardship has arisen with respect to the Lease Reaffirmation Agreement and the Sale Reaffirmation Agreement pursuant to section 524(m)(1), and the Court “shall” review this presumption.

In this case, the sole matter before the Court is consideration of the Lease Reaffirmation Agreement.<sup>1</sup> The attorney for the Debtors signed both the Lease Reaffirmation Agreement and the Sale Reaffirmation Agreement, averring that the agreements did not impose an undue hardship on the Debtors and that the Debtors would be able to make the payments pursuant to the agreements. Despite this representation, the Court is required to review the presumption of undue hardship pursuant to section 524(m). See 11 U.S.C. § 524(m) (“[I]t shall be presumed that such agreement is an undue hardship on the debtor if the debtor’s monthly income less the debtor’s monthly expenses as shown on the debtor’s completed and signed statement in support

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<sup>1</sup> The Lease Reaffirmation Agreement purports to reaffirm a lease. Section 365(p) of the Bankruptcy Code specifically addresses the assumption of a lease of personal property by a debtor in a Chapter 7 case. The courts are split as to whether reaffirmation pursuant to section 524 applies to leases that are subject to assumption under section 365(p), and the courts further are split as to whether assumption of the lease pursuant to section 365(p) alone (without any reaffirmation meeting the requirements of section 524) is sufficient for the debtor’s personal liability under the lease to survive the debtor’s discharge. See In re Garaux, 2012 W.L. 5193779, \*3 (Bankr. N.D. Ohio 2012) (and cases cited therein) (discussing the split, and holding that reaffirmation is necessary in order for the debtor’s personal liability to survive the discharge). This Court previously has held that, in order for personal liability under a lease to survive the debtor’s discharge, the obligations must be reaffirmed pursuant to section 524, and that an assumption of the lease pursuant to section 365(p) is insufficient to except the lease obligations from the debtor’s discharge. In re Crawford, Bankr. Case No. 10-80397 (Bankr. M.D.N.C. May 19, 2010) (Aron, J.) (unpublished).

of such agreement . . . is less than the scheduled payments on the reaffirmed debt. This presumption *shall* be reviewed by the court.”) (emphasis added).

The Court reviewed the presumption of undue hardship with respect to the Sale Reaffirmation Agreement, but did not disapprove the Sale Reaffirmation Agreement in this case. The key distinction between the Sale Reaffirmation Agreement and the Lease Reaffirmation Agreement is that there is no indication in the Sale Reaffirmation Agreement that the underlying Retail Installment Contract created additional potential liability for the Debtors beyond the monthly payments under the sales contract, which amounts specifically were set forth on the face of the agreement filed with the Court. In contrast, the Lease Reaffirmation Agreement purports to reaffirm not only the stream of payments due under the lease totaling \$10,005.52, but also purports to reaffirm the Debtors’ continuing liability for “all amounts due under the Lease at the termination of the Lease.” Lease Reaffirmation Agreement, Doc. #15, p. 3 of 13. Among other uncertainties, there was no evidence before the Court of the amount of these potential additional charges, when those amounts may become due, any mileage limitations under the Lease, any charges under the Lease in addition to the monthly payments, the number of miles for which the Debtors use the leased vehicle, the residual value under the Lease, the value of the vehicle, the existence of any purchase option, or the Debtors’ ability to obtain financing to exercise any purchase option. Without such information, the Court is unable to determine that the presumption of undue hardship has been rebutted.

For these reasons, the Court finds that the Debtors have not rebutted the presumption of undue hardship under 11 U.S.C. § 524(m), and the Lease Reaffirmation Agreement should be disapproved.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Lease Reaffirmation Agreement is disapproved.

**END OF DOCUMENT**