**UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**WINSTON-SALEM DIVISION**

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| **In Re:** | ) | |
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| **Randy Michael Dancy, Sr. and** | ) | **Case No. 02-52875** |
| **Tammie Jean Eason Dancy,** | ) | |
| | ) | |
| **Debtors.** | ) | |
| | ) | |

**ORDER DENYING MOTION TO REOPEN**

This matter came on for hearing before the court on April 2, 2003 to consider the Debtor's Motion to Reopen Case to enter into a reaffirmation agreement with Household Mortgage Corporation ("Household"). Gail C. Arneke appeared on behalf of the Debtors. The court, having reviewed the Motion and other matters of record, finds that the Debtors' motion must be denied.

The Debtors filed a petition under Chapter 7 of the Bankruptcy Code on October 23, 2003. Along with the petition, the Debtors each filed a Statement of Intent wherein Mr. Dancy indicated that he wished to retain and make regular payments for his home located in Boonville, North Carolina, which was encumbered by a mortgage in favor of Household. The property has an approximate value of $48,200 and, at the time of filing, the total amount of debt owed to Household was $72,313.72. Before the case was closed, the Debtors attempted to negotiate an agreement to reaffirm the mortgage with Household in exchange for Household's agreement to reduce the interest rate on the mortgage from 14% to 9.5%. In response, Household forwarded to the Debtors a proposed agreement; however, the Debtors' attorney, Wendell Schollander, would not sign the affidavit as required by 11 U.S.C. § 524(c)(3). The Debtors did not sign the

reaffirmation agreement. The Debtors received their discharge on January 23, 2003 and the case was closed on February 7, 2003. The Debtors have remained current on their payments (in the original amount) and retained possession of their property without redeeming or reaffirming pursuant to In re Belanger, 962 F.2d 345 (4th Cir. 1992). On March 7, 2003, the Debtors, represented by Gail C. Arneke, filed the present motion to reopen the case.

Reaffirmation agreements are governed by Section 524(c) of the Bankruptcy Code which provides that such agreements are enforceable only if, in relevant part:

> **(1)** such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title;
> . . .
> **(3)** such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that--
> **(A)** such agreement represents a fully informed and voluntary agreement by the debtor;
> **(B)** such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and
> **(C)** the attorney fully advised the debtor of the legal effect and consequences of--
> **(i)** an agreement of the kind specified in this subsection; and
> **(ii)** any default under such an agreement;

The Debtors do not dispute that a reaffirmation agreement must be made prior to the entry of the discharge, nonetheless, the Debtors argue that a reaffirmation agreement may be "made" within the meaning of 524(c)(1) when there is a meeting of the minds regarding that agreement. The Debtors rely on two cases in which reaffirmation agreements that were not filed until after the granting of the discharge were found to have been "made" prior to discharge. See In re Davis, 273 B.R. 152 (Bankr. S.D. Ohio 2001) (reaffirmation agreement was made prior to entry of discharge where creditor, debtors and attorney had signed the agreement prior to the entry of the discharge order); In re Lebeau, 247 B.R. 537 (Bankr. M.D. Fl. 2000)(reaffirmation agreement

was made prior to entry of discharge where parties had reached an agreement on the terms and the debtors had commenced performance). In this case, the Debtors contend that, while they did not sign the agreement or begin performance, their *intent* was to consummate the reaffirmation agreement prior to the discharge, that they made an effort to do so and that, therefore, the reaffirmation agreement fulfills the requirements of § 524(c)(1).

To be enforceable, a reaffirmation agreement must be made prior to the entry of the order of discharge. In re Pettet, 271 B.R. 855 (Bankr. S.D. Ind. 2002) (a reaffirmation agreement must be both made and filed prior to entry of order of discharge); In re Gibson, 256 B.R. 786 (Bankr. W.D. Mo. 2001) (court lacked jurisdiction to approve a reaffirmation agreement made after the discharge was entered and would not reopen case); In re Collins, 243 B.R. 217 (Bankr. D. Conn. 2000) (a reaffirmation agreement is "made," for the purposes of § 524(c)(1), no earlier than the time when the requisite writing which embodies it has been fully executed by the debtor). Reaffirmation agreements entered into after the granting of a debtor's discharge have no legal significance. In re Pettet, 271 B.R. at 856. A debtor who is unable to complete a reaffirmation agreement in the time required may delay the entry of the order of discharge by requesting an extension pursuant to Rule 4004(c)(2).

In this case, neither the Debtors, the creditor nor their attorney signed the reaffirmation agreement prior to the entry of the discharge, the reaffirmation agreement was not, and has not, been filed, and the parties did not begin performance under the proposed terms of the agreement. Furthermore, the court questions whether the parties ever reached a meeting of the minds prior to the entry of the discharge when Mr. Schollander would not sign the affidavit as required by 11 U.S.C. § 524(c)(3). The court can only assume that, prior to their discharge, the Debtors were

not fully informed or did not understand the consequences of the agreement, or that it imposed an undue hardship upon the Debtors to attempt to repay $72,313.72 in debt secured by property with a value of only $48,200.

The Debtors' intent to enter into a reaffirmation agreement prior to discharge is not sufficient to satisfy the requirements of § 524(c)(1). The court will not reopen a debtors' Chapter 7 case for the purpose of finding a reaffirmation agreement ineffective and unenforceable. See In re Kinion, 207 F.3d 751 (5th Cir. 2000).

For the reasons stated herein, the Debtors' motion to reopen the case to enter into a reaffirmation agreement is DENIED.

This the 15th day of April 2003.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge