

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

<b>IN RE:</b>	)	
	)	
<b>Robert Rush Crawford,</b>	)	<b>10-80397</b>
	)	
<b>Debtor.</b>	)	
_____	)	

**ORDER ON REAFFIRMATION AGREEMENT**

THIS MATTER came before the court on May 6, 2010, after due and proper notice, for a hearing on the Reaffirmation Agreement between the Debtor and GMAC filed on April 20, 2010. Appearing before the court was Robert Rush Crawford, the Debtor, Sheree Cameron, counsel for the Debtor, and Pamela P. Keenan, counsel for GMAC. After consideration of the motion and other matters of record, the court finds as follows:

The Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code on March 5, 2010 (the "Petition Date"). On his petition, the Debtor listed a lease agreement, dated November 21, 2007, for a 2008 Chevrolet Malibu (the "Lease Agreement"). The Lease Agreement provides for 47 payments in the amount of \$531.04 per month and provides the Debtor with an option to purchase the vehicle at the end of the lease term for \$12,881.60 plus fees and taxes. Post-petition, the Debtor assumed the Lease Agreement with GMAC pursuant to § 365(p).<sup>1</sup>

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<sup>1</sup>11 U.S.C. § 365(p)(2)(A) provides as follows:  
If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

On April 20, 2010, the Debtor filed the Reaffirmation Agreement, reaffirming his obligation to GMAC under a Lease Agreement. On the Reaffirmation Agreement, the Debtor represents that he can afford to make the lease payments because his monthly income is greater than his monthly expenses even after he includes payments for reaffirmed debts. The Debtor's attorney signed the Reaffirmation Agreement certifying that: (1) it represents a fully informed and voluntary agreement by the Debtor; (2) it does not impose an undue hardship on the Debtor or any dependent of the Debtor; and (3) the attorney fully advised the Debtor of the legal effect and consequences of the agreement and any default under the agreement.

Section 524(c) provides that an agreement reaffirming a dischargeable debt is enforceable if the agreement was made before the granting of the discharge, the debtor received the required disclosures at or before the time at which the debtor signed the agreement, and the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court. 11 U.S.C. § 524(c). In addition, if the debtor was represented by an attorney during the course of negotiating the agreement, the agreement must be filed with the court and accompanied by a declaration or an affidavit of the attorney which states that: (1) the agreement represents a fully informed and voluntary agreement by the debtor; (2) the agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and (3) the attorney fully advised the debtor of the legal effect and consequences of the agreement and any default under such an agreement. 11 U.S.C. § 524(c)(3). If a reaffirmation agreement indicates there is a presumption of undue hardship under § 524(m), the court must review a reaffirmation agreement even if it includes an attorney certification and may disapprove

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that agreement after notice and a hearing. 11 U.S.C. § 524(m)(1). Section 524 provides no mechanism for the court to review an attorney certified reaffirmation agreement other than subsection (m); however, as with any other pleading or other paper presented to the court, the attorney certification is subject to scrutiny under Rule 9011. *In re Morton*, 410 B.R. 556, 562 (6th Cir. BAP 2009); *In re Minardi*, 399 B.R. 841, 853-54 (Bankr. N.D. Okla. 2009). *See also In re Donald*, 343 B.R. 524, 527 (Bankr. E.D.N.C. 2006) (“Whether or not the debtors were represented by their attorney “during” the negotiation of the reaffirmation agreement is relevant to whether or not the court has the authority to approve or disapprove the agreement.”)

Here, the Debtor has reaffirmed an obligation stemming from a lease that has already been assumed. Absent a reaffirmation agreement, the personal obligation of a debtor under a lease which has been assumed pursuant to § 365(p) is subject to discharge. *In re Eader*, 426 B.R. 164 (Bankr. D. Md. 2010); *In re Creighton*, \_\_\_ B.R. \_\_\_, 2007 WL 541622 (Bankr. D. Mass. 2007); *In re Rogers*, 359 B.R. 591 (Bankr. D.S.C. 2007). Therefore, since the Debtor has already assumed the Lease Agreement, it is certainly in GMAC’s interest for the Debtor to reaffirm it as well. The Lease Agreement provides for additional payments in a total amount of \$9,558.72 and also requires the Debtor to pay \$.20 for each mile on the vehicle’s odometer beyond 48,046 at the end of the lease term. If the Debtor had not entered into the Reaffirmation Agreement, he would not be personally liable for those amounts in the event of default.

In contrast to GMAC, the Reaffirmation Agreement is of little, if any, benefit to the Debtor. In fact, the only possible benefit to the Debtor was articulated at the hearing by counsel for GMAC as follows: while GMAC is under no obligation to finance the Debtor’s purchase of the vehicle at the end of the lease term, GMAC would definitely not provide financing if the

Debtor did not reaffirm. Essentially, the Reaffirmation Agreement gives the Debtor the benefit of being *considered* for financing by GMAC, in exchange for which the Debtor is waiving his discharge. The court questions how Debtor's counsel concluded that the Reaffirmation Agreement is in the Debtor's best interest and does not impose an undue hardship.

Yet, as there is no presumption of undue hardship in this instance, there is no basis for the court to review the Reaffirmation Agreement under § 524. While the attorney for the Debtor's decision to sign the Reaffirmation Agreement is imprudent, it does not rise to a level which warrants sanctions under Rule 9011.

## **SERVICE LIST**

Robert Rush Carwford  
Debtor

Sheree Cameron  
Attorney for Debtor

Pamela Keenan  
Attorney for GMAC

GMAC  
Creditor

Sara A. Conti  
Trustee

Michael D. West  
U.S. Bankruptcy Administrator