

In the United States Bankruptcy Court

for the Northern District of Iowa

BECKY S. KIENZLE
aka Special Effects Salon
Debtor(s).

Bankruptcy No. 94-20804KD

Chapter 13

ORDER RE REAFFIRMATION AGREEMENTS

On August 24, 1994, the above-captioned matter came on for hearing on three Reaffirmation Agreements filed by Debtor. Debtor Becky S. Kienzle appeared on her own behalf. After consideration of the record and arguments of Debtor, the Court makes the following ruling.

Debtor seeks to reaffirm three debts pursuant to 11 U.S.C. § 524(c). These debts are: (1) to GMAC Corp. in the amount of \$7,863.11 with a monthly payment of \$207.22. The debt is a purchase money loan for a 1992 Chevrolet Cavalier; (2) to Healthmor Acceptance Corp. in the amount of \$1,217.28 with a monthly payment of \$38.04. The debt is a purchase money loan for a 1993 Filter Queen Air Filtration System (vacuum cleaner); and (3) to Robert and Dixie Grinnell (Debtor's parents) in the amount of \$6,200.00 with a monthly payment of \$85.00. This debt consists of funds borrowed to make the down payment on the Cavalier and Debtor's dissolution attorney's retainer. The record establishes that the value of the Cavalier is approximately \$7,700. The value of the vacuum cleaner is substantially less than the related debt. The debt owed to the Grinnells is unsecured.

Reaffirmation agreements must meet the requirements set out in § 524(c). If a debtor is not represented by an attorney in the negotiations, the Court must find that the agreement does not impose an undue hardship on the debtor and that the agreement is in the debtor's best interest. 11 U.S.C. § 524 (c)(6); In re Ellis, 103 B.R. 977, 981 (Bankr. N.D. Ill. 1989). The requirements of § 524(c) "are necessary to prevent the debtor from being coerced into signing a reaffirmation agreement and to enable the debtor to be fully aware of its consequences." Ellis, 103 B.R. at 981.

Congress' intent in enacting § 524(c) was to make possible a truly voluntary reaffirmation without eroding the effectiveness of bankruptcy relief. In re McGrann, 6 B.R. 612 (Bankr. E.D. Pa. 1980). That effectiveness is dependent upon compliance with three basic principles underlying the Code, namely (1) giving the debtor a "fresh start", (2) discouraging debtors from immediately seeking credit and (3) treating all creditors substantially alike. Id. Approval of reaffirmation agreements should be withheld if it would weaken the effectiveness of a debtor's discharge or result in discriminatory treatment of creditors. In re Avis, 3 B.R. 205, 207 (Bankr. S.D. Ohio 1980).

Undue hardship can arise from reaffirmation agreements which provide for monthly payments beyond a debtor's ability to pay. See In re Sampson, 51 B.R. 13, 14 (Bankr. D.D.C. 1984) (finding undue hardship where debtor would need help from son and godfather to pay debt for furniture); In re Bryant, 43 B.R. 189, 196 (Bankr. E.D. Mich. 1984) (holding that reaffirmation of debt for a luxury automobile would impose undue hardship on debtor who is unemployed and supporting minor children).

The "best-interest-of-the-debtor" test is largely an economic inquiry given the specific factual setting. McGrann, 6 B.R. at 613. "Simply put, either the debtor is entering into a mutually beneficial agreement, or she is not." Id. Courts look at options available to debtors in determining whether a reaffirmation agreement is in the debtor's best interest. Sampson, 51 B.R. at 15-16. Such options can include conversion to Chapter 13, exercising a right of redemption or allowing repossession of collateral and purchasing a low cost replacement. Id.

The Court will scrutinize each of the three proposed reaffirmation agreements for undue hardship and best interests in light of the foregoing principles of law.

CAR LOAN

Debtor proposes to pay \$207.22 per month on a debt of \$7,863.11 for her car loan. The value of the vehicle is close to the amount of the debt. Debtor has provided for this payment in her Schedule J; therefore, it does not appear to be beyond her ability to pay. The Cavalier is not an inordinately expensive automobile. The car is necessary for Debtor's transportation to work. See McGrann, 6 B.R. at 613 (approving reaffirmation of vehicle loan as necessary to continued employment although vehicles had lower value than existing debt). Debtor wishes to reaffirm in order to maintain a friendly and continuous relationship with GMAC Corp. through which she has obtained previous car loans and hopes to obtain financing in the future. The Court concludes that it is in Debtor's best interests to approve the reaffirmation agreement providing for payment of this debt to GMAC Corp.

VACUUM CLEANER LOAN

Debtor's "Filter Queen" vacuum cleaner is inordinately expensive. See McGrann, 6 B.R. at 613 (questioning the necessity for an expensive television set). Such appliances generally do not retain their value. The remaining debt of over \$1,200 exceeds the vacuum cleaner's value. Debtor could obtain a replacement, albeit perhaps not one of such high quality, for as little as one-tenth of this debt. See Sampson, 51 B.R. at 16 (considering option of replacement); In re Jenkins, 4 B.R. 651, 652 (Bankr. E.D. Va. 1980) (finding reaffirmation not in debtor's best interests as debtor could find better bargain than paying nearly \$800 for furniture valued at \$200). The payment of \$38.04 is provided for in Debtor's Schedule J and does not impose undue hardship on Debtor. However, it is not in Debtor's best interests to obligate herself for the debt to Healthmor Acceptance Corp. by reaffirmation. Therefore, the Court will not approve Debtor's reaffirmation of this debt.

LOAN FROM DEBTOR'S PARENTS

Debtor wishes to reaffirm her obligation to repay her parents for their loan which she used to pay the down payment on her car and the retainer for her dissolution attorney. This loan is entirely unsecured. Avoiding the discharge of this debt by reaffirmation would result in treating her parents differently than other unsecured creditors. Courts do not generally approve reaffirmation agreements which are entered into for the sole purpose of benefitting friends or family members. See In re Berkich, 7 B.R. 483, 484 (Bankr. E.D. Pa. 1980) (disapproving reaffirmation agreement meant to protect mother who was guarantee on loan); Avis, 3 B.R. at 206 (refusing to allow debtor to reaffirm where friends had co-signed loan).

Debtor has not provided for the \$85.00 monthly payment on this loan in her Schedule J. A comparison of Schedules I and J reveals that Debtor has only a few dollars of income per month

which are not committed to paying other necessary expenditures. The Court concludes that reaffirmation of this debt would impose an undue hardship on Debtor and is not in her best interests.

SUMMARY

The Court approves Debtor's reaffirmation agreement concerning the debt of \$7,863.11 to GMAC Corp. The Court does not approve Debtor's reaffirmation of her debt of \$1,217.28 to Healthmor Acceptance Corp. for the Filter Queen vacuum cleaner or her debt of \$6,200.00 to her parents Robert and Dixie Grinnell.

WHEREFORE, the Reaffirmation Agreement providing for payment to GMAC Corp. in the amount of \$7,863.11 with monthly payments \$207.22 is APPROVED.

FURTHER, the Reaffirmation Agreement providing for payment to Healthmor Acceptance Corp. in the amount of \$1,217.28 is DISAPPROVED.

FURTHER, the Reaffirmation Agreement providing for payment to Robert and Dixie Grinnell (Debtor's parents) in the amount of \$6,200.00 is DISAPPROVED.

SO ORDERED this 29th day of August, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge