UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
DIANE RENEE PRECIADO
aka Diane R. Torrez,
Debtor.

No. 7-08-13200 SA

AMENDED ORDER DISAPPROVING REAFFIRMATION AGREEMENT WITH CHRYSLER FINANCIAL COMPANY (DOC 12)

The proposed reaffirmation agreement between Debtor Diane Renee Preciado and Creditor Chrysler Financial Company (doc 12) came before the Court for a hearing pursuant to §524(m) on December 17, 2008. Debtor was present in person; attorney James E. Shively of Poli & Ball, P.C. appeared for Creditor.[1] Having reviewed the file and the proposed agreement, the Court finds that the agreement should be disapproved.

The Court considers that reaffirmation agreements (reaffirming otherwise dischargeable claims) exist largely to benefit creditors, since the agreements in effect convert non-recourse debt back into recourse debt. Section 524(f) explicitly permits a debtor to voluntarily repay a debt and nothing prevents a creditor from permitting a debtor to continue to possess and use the collateral until it is paid off. In consequence, the Court considers that it is the creditor's burden to assure that a reaffirmation agreement submitted to the Court is fully and accurately completed in accordance with §524 and Rule 4008,

[1] This Court's experience is that, with certain exceptions, creditors almost never appear at reaffirmation hearings. Mr. Shively's contribution at this hearing was quite helpful and enlightening.

F.R.B.P. This burden is further justified by the fact that it is almost always the case that creditors, who deal with reaffirmations on a daily basis, have the requisite expertise and resources to ensure that reaffirmation agreements are correctly filled out, even if that means the creditor must return an agreement to a debtor for correction (such as Part D) before filing it with the Court. In consequence, this Court frequently disapproves or refuses to approve agreements which fail to meet the requirements of the statute or the rule. E.g., In re Neatherlin, No. 08-10465, United States Bankruptcy Court, District of New Mexico (doc 17), entered April 24, 2008. On the other hand, the Court will usually approve an agreement which provides a substantial benefit to the debtor, such as a significantly lower principal balance and interest rate which is as good as or better than debtor might be able to negotiate in the market postpetition, even if the formal requirements of the statute and rule have not been met.

In the instant case, the agreement fails to comply with Fed.R.B.P. 4008 in that it does not set out in Part D of the agreement what are the analogous numbers from Schedules I and J, and does not explain the discrepancy between those numbers. In addition, the "No Presumption of Undue Hardship" box on the first page is inaccurately checked in light of the Schedule I and J

numbers, and Part D does not disclose any additional source of income to make the required payments contrary to §524(m).

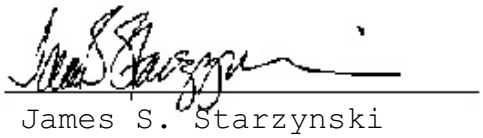
IT IS THEREFORE ORDERED that the reaffirmation agreement is disapproved.[2]

IT IS FURTHER ORDERED, in view of Debtor's inquiry at the hearing to Creditor about resuming automatic debits so that she does not incur a $10 charge by calling in the payment authorization each month, and Mr. Shively's response that Chrysler has insufficient financial resources currently to update its computer system to allow automatic debits to resume after a bankruptcy petition is filed, that Creditor shall be deemed to

---

[2] In making this statement, this Court is not suggesting in any way that if a court does not approve or if it disapproves a reaffirmation agreement, the creditor has the right, whether under federal or state law, to repossess the vehicle (assuming the debtor has continued to make payments, keep the vehicle insured, etc.). See, e.g., In re Husain, 364 B.R. 211 (Bankr. E.D. Va. 2007) (debtor files intention to reaffirm and reaffirmation agreement, although without counsel's certificate, and Court declines to approves agreement; §521(a)(6)(hanging paragraph) and §362(h) do not become effective); Coastal Federal Credit Union v. Hardiman, __ B.R. __, 2008 WL 4899529 (E.D.N.C. 2008) (same); and In re Baker, 390 B.R. 524 (Bankr. D. Del. 2008) (debtor files intention to reaffirm and reaffirmation agreement submitted but Court declines to approves agreement; held, creditor sanctioned for repossessing vehicle), appeal docketed U.S. District Court June 20, 2008; contra, In re Milby, 389 B.R. 466 (Bankr. W.D. Va. 2008) (bankruptcy court had no jurisdiction to declare compliance with statutory reaffirmation obligations, and alternatively finding that the debtor did not enter into the reaffirmation agreement in good faith when the debtor's only purpose was to satisfy the statutory requirements necessary to preclude the operation of §§521(a)(6) and 362(h)). See generally Daimler Chrysler Financial Services Americas, LLC v. Jones (In re Jones), __ B.R. __, 2008 WL 5088663 (S.D.W.V. 2008) (listing and discussing cases).

not be in violation of any provision of §362 or §524 should it resume automatic debits as Debtor has requested.[3]



James S. Starzynski
United States Bankruptcy Judge

Date Entered on Docket: December 18, 2008

COPY TO :

Diane Renee Preciado
P.O. Box 84
Peralta, NM 87042

Donald Provencio
1721 Carlisle Blvd NE
Albuquerque, NM 87110-5621

Linda S. Bloom
Trustee
PO Box 218
Albuquerque, NM 87103-0218

CHRYSLER FINANCIAL COMPANY
POLI & BALL, PLC
2999 N. 44TH ST, #500
PHOENIX, AZ 85018

[3] No hearing has been requested about whether not restoring Debtor's account to its prepetition status constitutes a violation of either statute, particularly the discharge injunction.