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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 08-11297  
)  
RACHAEL A. HUSKINSON, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**  
) **AND ORDER**

The debtor Rachael Huskinson filed her chapter 7 case on February 27, 2008. She now seeks to reaffirm a debt with Community Star Credit Union that, according to her budget and the reaffirmation agreement, she cannot afford to pay. If the creditor were other than a credit union, the court would find that the proposed agreement is an undue hardship on the debtor that will jeopardize the fresh start to which she would otherwise be entitled under the bankruptcy code, and for that reason would not approve the agreement. Because the creditor is a credit union, the court finds that it does not have the power to do that.

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334(b) and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(O).

## FACTS

When the debtor filed her case, she listed monthly income of \$1,282.18 and expenses of \$1,424.18, for a negative balance of \$142.00.<sup>1</sup> Her budget is very tight, with no allocation for housing, insurance (health, home, or life), or recreation. Among other debts, she scheduled a \$4,000.00 debt owed to Commstar Credit Union, which debt is secured by a 2001 Ford Escort valued at \$2,000.00.<sup>2</sup>

The debtor and Community Star Credit Union filed a Reaffirmation Agreement.<sup>3</sup> In it, they agreed that the debtor would reaffirm \$4,195.39 in debt. The repayment schedule states:

Your first payment in the amount of \$200.85 is due on April 12, 2008 . . . , but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.

Her counsel certified that:

A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

And the debtor signed this statement:

I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

The court set this matter for a hearing because it was apparent that the debtor could not afford to make the payments on the reaffirmed debt. The hearing notice gave the debtor the

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<sup>1</sup> Docket 1, schedules I and J.

<sup>2</sup> Docket 1, schedule D.

<sup>3</sup> Docket 8.

opportunity to file an amended budget and to provide factual support for the blanket statement that she could afford to make the payments. The debtor did not file anything further. Counsel for the creditor appeared at the hearing, but the debtor and her counsel did not.

## DISCUSSION

### 11 U.S.C. § 524

A fundamental policy of the bankruptcy code is to provide a fresh financial start to the honest but unfortunate debtor by releasing the debtor from liability for certain debts. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 563 (1994). There is an exception, however, with respect to reaffirmation agreements. These are agreements in which the debtor, in effect, agrees to waive the discharge with respect to a particular debt and continue to pay the obligation. If the debtor defaults under the reaffirmation agreement, the creditor may sue the debtor for the amount due under the agreement.

Bankruptcy code § 524 establishes the conditions under which reaffirmation agreements are enforceable. 11 U.S.C. § 524.<sup>4</sup> “The reaffirmation rules are intended to protect debtors from compromising their fresh start by making unwise agreements to repay dischargeable debts.” *Republic Bank of California, N.A. v. Getzoff (In re Getzoff)*, 180 B.R. 572, 574 (B.A.P. 9th Cir. 1995). Congress emphasized the importance of this issue when, as part of the 2005 amendments to the bankruptcy code,<sup>5</sup> it amended § 524 to provide greater consumer protection. *In re Husain*,

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<sup>4</sup> See also Amended Gen. Order 05-6 (requiring that all reaffirmation agreements filed under § 524(c) conform to Form B240 as promulgated by the Administrative Office of the United States Courts in October 2005 and as amended).

<sup>5</sup> Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23, effective 180 days after April 20, 2005 except as otherwise provided.

364 B.R. 211, 215 (Bankr. E.D. Va. 2007) (citing H.R. Rep. No. 109-31, at 57 (2005) *as reprinted in* 2005 U.S.C.C.A.N. 88, 127).

As amended, § 524 now requires that: (1) the creditor give the debtor detailed disclosures; (2) debtor’s counsel file a certification in connection with the reaffirmation agreement; (3) the debtor submit a statement in support of the reaffirmation agreement; and (4) the bankruptcy court provide judicial oversight in most cases. *See* 11 U.S.C. §§ 524(c)(2), (c)(3),(c)(6)(A), (d), (k), (m)(1). In effect, the section requires what has been called a “reaffirmation agreement package.” David B. Wheeler and Douglas E. Wedge, *A Fully-Informed Decision: Reaffirmation, Disclosure and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 AM. BANKR. L. J. 789, 795 (Summer 2005). Without legislative explanation, however, the amended statute removes the protection of judicial oversight when a represented debtor decides to enter into a reaffirmation agreement with a credit union.<sup>6</sup>

This result comes about because of the interplay between § 524(m)(1) and (2). Under (m)(1), a reaffirmation agreement is presumed to be an undue hardship for the debtor—thus triggering judicial review—if the debtor’s monthly income less expenses is less than the proposed payments on the debt at issue. 11 U.S.C. § 524(m)(1). Section (m)(2), however, provides that the presumption of undue hardship does “not apply to reaffirmation agreements where the creditor is a credit union[.]” 11 U.S.C. § 524(m)(2). *See In re Rios*, No. 07-51263-C, 2007 WL 2409547, at \*1 (Bankr. W.D.Tex. Aug. 20, 2007) (noting that § 524 excuses “reaffirmation of debts with credit unions from the ‘undue hardship’ limitations of section 524(m)(1)”); *In re Isom*,

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<sup>6</sup> The term “credit union”, as used throughout this opinion is “defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.” 11 U.S.C. § 524(m)(2).

No. 07-31469, 2007 WL 2110318, at \*1 (Bankr. E.D. Va. July 17, 2007) (same); *In re Carver*, 338 B.R. 521, 527 (Bankr. S.D. Ga. 2006) (acknowledging that the presumption of abuse does not apply when a reaffirmation agreement involves a credit union and noting that the court “is required to accept a credit union gets better treatment than another entity that might look like a credit union in every way—such as a bank”).<sup>7</sup>

Based on § 524(m)(2), then, when a debtor enters into a reaffirmation agreement with a credit union with the assistance of counsel, the reaffirmation agreement is not subject to judicial oversight even though the debtor is unquestionably making a bad financial decision that will negate the benefits of the fresh start. There is no explanation in the legislative history for why represented debtors who enter into reaffirmation agreements with credit unions are given less protection than those who enter into agreements with other creditors. Nevertheless, applying the law to the facts of this case, the court finds that (1) the debtor does not have enough income to make the payments called for by the reaffirmation agreement, and (2) entering into the agreement will immediately cause the debtor to be in financial distress, but (3) the court does not have the power to do anything other than advise the debtor of this situation.


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<sup>7</sup> Unrepresented debtors, on the other hand, can be prevented from entering into financially unsound agreements with credit unions. *See* 11 U.S.C. § 524(c)(6) (providing that an unrepresented debtor’s reaffirmation agreement is only enforceable if the court finds that it does not impose an undue hardship and is in the debtor’s best interest, unless the agreement involves a consumer debt secured by real property).

**CONCLUSION**

The hearing regarding the debtor's reaffirmation agreement with the credit union is concluded.

IT IS SO ORDERED.

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge