UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

RICHARD A. BROWN, Case No. 85-2204-C
BETH L. BROWN,
dba Smokemaster of Iowa,

Debtors.

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ORDER ON APPLICATION

On December 19, 1986 the application for order filed on behalf of the Valley National Bank (hereinafter referred to as the Bank) on September 17, 1986 came on for hearing before this court in Des Moines, Iowa. Earl W. Sutton appeared on behalf of the Bank. The debtors appeared pro se. (The debtor's attorney was suspended from the practice of law as of May 21, 1986 for a period of one year.) Donald Neiman, the acting trustee, was also present.

In the application filed September 17, 1986, the Bank seeks an order denying the discharge of debtors for failure to comply with a written agreement[1], or, in the alternative, for an order requiring the debtors to reaffirm their debt with the bank. Attached to the Bank's application is a

[1] A proceeding to revoke a discharge is an adversary proceeding under R.Bankr.P. 7001(4) and must be brought by complaint within the time allowed by section 727(e). Despite the improper form of pleading, the court will address the merits at this time.

promissory note for the sum of one thousand five hundred dollars ($1,500.00), a copy of a letter received from the debtors' former attorney concerning an agreement to reaffirm the debt to the Bank, and an unsigned copy of a reaffirmation and adequate protection agreement. The Bank contends that debtor Richard A. Brown, through his attorney, agreed to reaffirm this $1,500.00 debt. The Bank further argues that it followed a practice of relying upon an attorney's written agreement that debtors would reaffirm their debt.

The debtors filed their petition for relief under 11 U.S.C. chapter 7 on October 10, 1985. January 10, 1986 was fixed as the last day for filing objections to the discharge or a complaint to determine the dischargeability of any debt. The file contains no discharge objections and no dischargeability complaints. The debtors received a discharge on February 12, 1986, and filed an affidavit and waiver of discharge hearing on February 24, 1986. No reaffirmation agreement was presented to the court.

At the time of the hearing, the Bank argued that the alleged agreement to reaffirm the debt was a compromise for its decision to forego filing a dischargeability complaint. The parties were given two weeks to brief the matter. The Bank filed its brief in s . upport of its application on December 31, 1986; debtors have not filed a brief to date.

The enforceability of a reaffirmation agreement between a holder of a claim and the debtor is governed by 11 U.S.C. section 524(c). The legislative history of section 524(c)

indicates that the drafters of the Code were aware of serious abuses which had occurred in relation to reaffirmation agreements under the Act. Congress sought to protect debtors from sophisticated creditors who sometimes pressured the debtors to enter into ill-advised reaffirmation agreements, thereby defeating the "fresh start" policy of the bankruptcy law. See H.R. Rep. No. 595, 95th Cong., 2d Sess., at 163 (1977), reprinted in, 1978 U.S. CODE CONG. & ADMIN. NEWS 5787, 6124-25.

To insure that reaffirmation agreements are truly voluntary, section 524(c) requires that:

> (1) such agreement was made before the granting of the discharge under section 727, 1141, or 1328 of this title;
>
> (2) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;
>
> (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 such agreement --
>
> (A) represents a fully informed and voluntary agreement by the debtor; and
>
> (B) does not impose an undo hardship on the debtor or a dependent of the debtor;
>
> (4) 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, whichever occurs later, by giving notice of rescission to the holder of such claim;
>
> (5) the provisions of subsection (d) of this section have been complied with; and
>
> (6) (A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as--
>
> (i) not imposing an undue hardship on the debtor or a dependent of the debtor; and
>
> (ii) in the best interest of the debtor.
>
> (B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

Bankruptcy courts are in agreement that the language of section 524(c) must be strictly construed. In re Gardner, 57 B.R. 609, 611 (Bankr. Me. 1986); In re Jackson, 49 B.R. 298, 302 (Bankr. Kan. 1985); In re Roth, 38 B.R. 531, 536 (Bankr. N.D. Ill.), aff'd, 43 B.R. 484, 487-88 (D.C. Ill. 1984); In re Miller, 13 B.R. 697, 699 (Bankr. E.D. Pa. 1981). This court finds that the alleged reaffirmation agreement between the Bank and the debtors did not comply with the provisions of section 524.

The Bank admits that no agreement with the debtors was ever finalized. The reaffirmation agreement attached to the Bank's application is not signed by the debtors, the debtors' attorney or the Bank. Not surprisingly, the unsigned

document was not filed with the court.

Nevertheless, the Bank argues that it relied upon a letter from the debtors' attorney concerning an agreement to reaffirm the debt and prays that this court "do equity" by either revoking the discharge or by ordering the debtor to execute the unsigned reaffirmation agreement. While the bankruptcy court is a court of equity, the clear provisions of the Bankruptcy Code cannot be ignored. See Johnson v. First Nat'l Bank of Montevideo, Minn., 719 F.2d 270, 273 (Bth Cir. 1983), cert. denied, 465 U.S. 1012, 104 S. Ct. 1015, 79 L.Ed.2d 245 (1984). In the instant case, neither principles of law nor equity support the relief requested by the Bank.

The initial decision of whether or not to reaffirm a debt lies solely within the discretion of the debtor. Neither the court nor a creditor can force a debtor to reaffirm a dischargeable debt. In re Roth, 38 B.R. 531, 536 (Bkrtcy. N.D. Ill. 1984). In finding that a creditor has no standing even to testify at a discharge hearing in support of a reaffirmation agreement, Judge Proctor stated that:

> The fact that it is the creditor and not the debtor which is vigorously pressing forward this application shows in whose interest reaffirmation would be. The court takes judicial notice that banks are not eleemosynary institutions.

In re Gardner, 13 B.R. 319, 320 (Bkrtcy. M.D. Fla. 1981). To allow creditors to seek enforcement of reaffirmation agreements would be in contravention of Congress' intent to

discourage creditors from pressuring debtors into ill-advised reaffirmation agreements. See In re Newsome, 3 B.R. 626, 629 (Bankr. N.D. Va. 1980).

Moreover, this court is unwilling to allow the Bank, arguably a sophisticated creditor, to take refuge in the words of a debtor's attorney rather than insist upon a signed and filed document evidencing the debtors' voluntary agreement to reaffirm a debt. This is particularly the case where, as here, the Bank argues that an agreement to reaffirm was obtained in exchange for the Bank's agreement not to pursue a dischargeability complaint. Even the debtors' attorney's letter, upon which the Bank claims it relied, fails to establish that the debtors were fully informed and voluntarily agreed to reaffirm the debt. Likewise, the correspondence does not demonstrate that such agreement would not impose an undue hardship on the debtor. See 11 U.S.C. section 524(c)(3). Accordingly, traditional notions of equity prohibit the court from granting the relief requested by the Bank.

Finally, it should be noted that even if the Bank had properly filed a complaint to revoke the discharge, the elements of 11 U.S.C. section 727(d) have not been satisfied. The Bank has failed to prove that the discharge was obtained through fraud, that the debtor acquired and concealed property of the estate, or that the debtors refused to obey an order of the court.

WHEREFORE, it is hereby found that no enforceable

reaffirmation agreement exists between the Bank and the debtors.

THEREFORE, the relief sought by the Bank in its Application for Order filed September, 17, 1986 is denied.

Signed and filed this 19th day of February 1987.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE