

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of :
DAMIEN GREGORY DASSIE, : Case No. 95-01536-D J
Debtor. : Chapter 7

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RULING AND ORDER

On May 25, 1995 the debtor filed a voluntary petition commencing this case. On July 21, 1995 David P. Miller, attorney for the debtor, filed a Motion to Reaffirm Attorney's Fees, along with a Reaffirmation Agreement he and the debtor timely executed on July 15, 1995. The agreement reads:

This agreement is entered into between Damien Dassie, the debtor(s), and David Paul Miller, PC, 1203 Jersey Ridge Road, P.O. Boc[sic] 4668, Davenport, Iowa, 52803, and is necessitated because of Case No. 95-1536 where the discharge is expected to be entered before the balance of the attorney's fee rendered prepetition as a charge for the whole case has been paid in full. The balance is 200. It is agreed that this reaffirmation is voluntary and does not work a hardship on the debtor(s) or their dependents and may be rescinded within 60 days of the filing of the agreement or the entry of the discharge, whichever is later, by sending a letter to the lawyer so stating.

A prepetition agreement on attorney's fees is dischargeable in bankruptcy. In re Hessinger & Associates, 165 B.R. 657 (Bankr. N.D. Cal. 1994). Reaffirmation of a prepetition fee agreement is not prohibited by the Bankruptcy Code but must comply strictly with the statutory mandates and requires detailed notice and disclosure.

In re Symes, 174 B.R. 114 (Bankr. D. Ariz. 1994).

With respect to the wording of reaffirmation agreements in

cases commenced on or after October 22, 1994, 11 U.S.C. section 524(c)(2) of the Code imposes the following requirements:

- (2) (A) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the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; and
- (B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;

. . . .

The reaffirmation agreement under consideration does not contain the statement required by section 524(c)(2)(B) and therefore is fatally defective on its face.

Additionally, the reaffirmation agreement only marginally meets the requirements of section 524(c)(2)(A). The required statement is by no means "clear and conspicuous". See, e.g., In re Noble, 182 B.R. 854 (Bankr. W.D. Wash. 1995) (finding statement in the same typeface, size, format and case as the bulk of the agreement was not "clear and conspicuous" as required by section 524(c)); Symes, 174 B.R. at 117 (holding reaffirmation agreement must tell debtor in plain, conspicuous, written terms that the prepetition debt is dischargeable).

Finally, section 524(c)(3) provides that the court may not approve a reaffirmation agreement unless:

- (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 --

- (A) such agreement represents a fully informed and voluntary agreement by the debtor;
- (B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and
- (C) the attorney fully advised the debtor of the legal effect and consequences of--
 - (i) an agreement of the kind specified in this subsection; and
 - (ii) any default under such an agreement;

. . . .

Recognizing the conflict of interest he faced in submitting his declaration or affidavit with respect to a reaffirmation agreement covering his fees, Mr. Miller stated in the motion he filed:

3. In order to conform to 11 USC §524(c), and in place of the attorney's declaration that it is in the debtor's best interest, is not a hardship on the debtor or his dependents, and is voluntary, the attorney has filed this motion on notice to the interested parties and the court as the hearing proposal.

In order to ensure debtors do not compromise their fresh start by executing reaffirmation agreements like the one under consideration, the court finds the local bar date notice procedure does not suffice. Attorneys that seek approval of such reaffirmations must request a hearing under section 524(d). Cf. Matter of Perez, 177 B.R. 319 (Bankr. D. Neb. 1995) (permitting affidavit or declaration from independent counsel).

Notwithstanding the foregoing, the court notes that a debtor may voluntarily repay a dischargeable debt as permitted by section 524(f).

ORDER

IT IS THEREFORE ORDERED that the Motion to Reaffirm Attorney's Fees filed by the debtor's attorney is denied and that the reaffirmation agreement is not approved.

Dated this 29th day of August, 1995.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE