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

IN THE MATTER OF:	:	
Victor E. Norman,	:	Case No. 98–04463–D J
Penny L. Norman,		
	:	Chapter 7
Debtors.		

## ORDER REGARDING REAFFIRMATION AGREEMENT WITH COMPANION SERVICING COMPANY

On December 4, 1998 a reaffirmation agreement between the pro se Debtors, Victor and Penny Norman, and Companion Servicing Company (Companion) was filed. The agreement provided that the Debtors would pay Companion according to the terms of loan #W112460, dated October 20, 1997. The loan was a consumer debt secured by real property—the Debtors' homestead located at 726 N. 11<sup>th</sup> Street, Clinton, Iowa.

On December 22, 1999 the Court, based on a review of the record, entered an order declining to approve the reaffirmation agreement with Companion because the document did not contain the clear and conspicuous language required by 11 U.S.C. section 524(c)(2)(B). In that order, the Court also noted that it had conducted a hearing on December 17, 1998 with respect to three other reaffirmation agreements filed in this case.<sup>1</sup> The Court pointed out that it had been unable to make the required findings of fact under 11 U.S.C. section 524(c)(6)(A)(i) (no undue hardship on debtors) and (ii) (best interest of debtors) due to the status of the information contained in the Schedules filed to date and due to Mr. Norman's representation that the Debtors were obtaining a dissolution of their marriage.

On January 25, 1999 the Court granted the Debtors a discharge pursuant to 11 U.S.C. section 727.

On February 3, 1999 the Debtors filed another agreement reaffirming their homestead debt with Companion. The document bears the signatures of both Debtors and is dated January 31, 1999. This agreement does contain the clear and conspicuous language required by 11 U.S.C. section 524(c)(2)(B).

<sup>&</sup>lt;sup>1</sup> The reaffirmation agreements were with another creditor, failed to include certain language required by statute, and did not entail consumer debt secured by real property. Only Mr. Norman appeared at the December 17, 1998 hearing.

On February 18, 1999 the Court conducted a hearing on a reaffirmation agreement that had been filed in this case on December 28, 1998. That agreement was with yet another creditor, failed to include certain language required by statute, and did not entail consumer debt secured by real property. Neither Debtor appeared at the February 18, 1999 hearing.

11 U.S.C. section 524(c)(1), however, requires that a reaffirmation agreement must be made before the discharge is granted. See Lee v. Yeutter, 917 F.2d 1104, 1106 n.3 (8th Cir. 1990); In re Perry, 225 B.R. 497, 498 n.2 (Bankr. D. Colo. 1998) (denying reaffirmation agreement entered into 9 days after grant of discharge); In re Whitmer, 142 B.R. 811 (Bankr. S.D. Ohio 1992) (denying reaffirmation agreement entered into 13 days after grant of discharge). The pending reaffirmation agreement is dated January 31, 1999, six days after the general discharge of debt was entered. Accordingly, the Court can not approve the agreement.

Even if the Court could relate the second reaffirmation agreement back to the date of the original agreement with Companion, the circumstances of the case make official Court approval of the agreement problematic. Though the Court is not required to make the section 524(c)(6)(A) findings when an agreement covers a consumer debt secured by real property, 11 U.S.C section 524(c)(5) requires the Court to administer the admonitions outlined in 11 U.S.C. section 524(d)(1). Pursuant to that section a court must inform a debtor, who is not represented by counsel in the negotiation of the reaffirmation agreement, that the debtor has no legal obligation to enter into the reaffirmation agreement and must inform the debtor of the legal effect and consequences of the reaffirmation agreement and any default thereunder. See In re Kamps, 217 B.R. 836, 845 (Bankr. C.D. Cal. 1998). While the Court did inform Mr. Norman of the full ramifications of reaffirmation agreements at the hearing on December 17, 1998, the Court has not been able to apprise Mrs. Norman of her rights and responsibilities under the reaffirmation agreement.<sup>2</sup> For this reason the reaffirmation agreement may also be disapproved. Id. at 846. Finally it must be noted that Mrs. Norman's respective liability on the homestead debt, as a result of the dissolution proceedings, is not clear from the record before this Court.

**THEREFORE, IT IS ORDERED** that the Reaffirmation Agreement filed February 3, 1999 is not approved. The Debtor/s may voluntarily repay the debt as provided in 11 U.S.C. section 524(f).

Dated this 23<sup>rd</sup> day of April, 1999.

LEE M. JACKWIG U.S. BANKRUPTCY JUDGE

Parties Served: Interested Parties

<sup>&</sup>lt;sup>2</sup> Not only has Mrs. Norman not appeared at any court hearing to date, she failed to appear at the section 341 meeting of creditors for medical reasons. (Docket #34—Trustee's Minutes.)