



IT IS ORDERED as set forth below:

Date: March 28, 2011

**W. H. Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
VANESSA DIXSON,	:	09-12786-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEBTOR.	:	BANKRUPTCY CODE

ORDER

Vanessa Dixon (hereinafter the "Debtor") seeks a determination from the Court that certain debts owed to formerly secured creditors have been discharged. Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on August 7, 2009. On September 22, 2009, Citifinancial Auto Credit, Inc. (hereinafter "CACI") filed a reaffirmation agreement between Debtor and CACI with regard to a debt secured by a 2003 Mercedes E320. On October 1, 2009, Capital One Auto Finance (hereinafter "COAF") filed a reaffirmation agreement between Debtor and COAF with regard to a debt secured by a

2006 Dodge Charger. On December 3, 2009, the Court granted Debtor a discharge and the case was closed. Debtor moved on September 20, 2010 for the reopening the case, and the case was reopened on November 8, 2010.

On December 9, 2010, Debtor filed a Motion to Extend Discharge Against Claim of Citifinancial and, on December 13, 2010, filed a Motion to Extend Discharge Against Claim of Capital One Auto Finance. Both motions appear to seek the entry of an order to enforce the discharge order against COAF and CACI on the basis that the reaffirmation agreements are unenforceable and Debtor's personal liability for the associated debts has been discharged. Specifically, in both motions, Debtor asserts that COAF and CACI have claimed "that there is a deficiency balance owed" on these debts. From this, the Court infers that COAF and CACI are actively attempting to collect what Debtor believes are discharged debts.

In the case of CACI, Debtor alleges that the reaffirmation agreement was breached by CACI because CACI initially agreed to defer a delinquent payment and to extend the maturity date of the associated loan. The motion alleges that CACI failed to abide by these terms and "accepted the return of the vehicle and sold it to pay the secured debt." With regard to COAF, Debtor does not even allege a breach of the reaffirmation agreement by COAF, but instead asserts that Debtor's discharge should be extended to cover any deficiency balance owed on the vehicle because of a post-reaffirmation change in circumstances that now demonstrates reaffirming the COAF debt created an undue hardship

on the Debtor.

As to the COAF agreement, Debtor alleges no basis upon which the Court could hold that the agreement did not comply with section 524(c) or is otherwise unenforceable against Debtor. Pursuant to section 524(c)(4), Debtor had sixty days from the date of the filing of the COAF agreement or the date of the entry of her discharge, whichever was later, to rescind the COAF agreement. She apparently did not do so, and the time for rescinding the agreement has passed. Consequently, the fact that circumstances have changed following her decision to reaffirm the COAF debt simply gives the Court no basis to find the COAF reaffirmation agreement unenforceable or to find that Debtor's personal liability for the reaffirmed COAF debt has been discharged. *See In re Wathey*, 04-92456-JEM (Bankr. N.D. Ga. Feb. 16, 2005) (Massey, J.). Because the motion, as it pertains to COAF, fails to state a claim upon which relief can be granted, the Court must, even in the absence of a response, deny the motion.

As to the CACI reaffirmation agreement, the gravamen of Debtor's motion appears to be that CACI breached the reaffirmation agreement after Debtor received her discharge. This is not a basis upon which the Court can find that the agreement itself was not valid or enforceable at the time it was entered by Debtor and CACI. It is not clear that this Court has subject matter jurisdiction to determine whether the breach of an otherwise valid reaffirmation agreement is a basis upon which to find that the debt was discharged. In any event, it appears that the motion was not properly served on CACI. The motion was served

to the attention of Julio Enriquez, Bankruptcy Specialist. Whether the Court considers this to be a motion to hold CACI in contempt of the discharge injunction or a request for a judgment declaring the debt owed to CACI has been discharged (which should have been filed as an adversary proceeding, pursuant to Federal Rule of Bankruptcy Procedure 7001(6) or 7001(7)), the motion should be served upon CACI in the manner required for the service of a complaint and summons. *See id.* (noting that debtor's motion to reopen case in order to declare reaffirmed debt discharged arguable initiates a contested matter that requires service of the motion in accordance with Rule 7004). Proper service requires mailing the motion to the attention of an officer or general agent of CACI, or an agent authorized by appointment or by law to receive service of process. *See* FED. R. BANKR. P. 7004(b)(3). The Court finds it unlikely that a "bankruptcy specialist" at CitiFinancial Auto Credit, Inc. is such a person. *See McMillen v. Central Financial Control*, 09-6611-JB (Bankr. N.D. Ga. Feb. 25, 2010) (Bihary, J.).

For the reasons stated above, the motion against Capital One Auto Finance is **DENIED** for failure to state a claim upon which relief can be granted.

Within ten (10) days, Debtor may refile the motion against CACI with proof of proper service, at which time the Court will consider whether subject matter jurisdiction exists to permit this Court to determine whether CitiFinancial Auto's alleged breach of the reaffirmation agreement rendered the reaffirmation agreement unenforceable against Debtor. If Debtor does not file a renewed motion, the Motion shall stand **DENIED** as of

the date of the entry of this Order.

The Clerk is DIRECTED to served a copy of this Order on Debtor, counsel for Debtor, Capital One Auto Finance, and CitiFinancial Auto Credit, Inc.

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