UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:	: CASE NUMBER: A03-81228-PWB
	:
SHENIKA MADDOX-RHYNES,	:
	: IN PROCEEDINGS UNDER
	: CHAPTER 7 OF THE
Debtor.	: BANKRUPTCY CODE

ORDER DENYING DEBTOR'S MOTION TO REOPEN CASE

Before the Court is the Debtor's motion to reopen her chapter 7 case for the purpose of adding a creditor, Circle 10 Federal Credit Union. According to the Debtor's motion, Debtor reaffirmed a debt with Circle 10 for a 2001 Chevy Tahoe in the amount of $28,563.67 in her chapter 7 case. After receiving a discharge, the Debtor could no longer afford the vehicle and surrendered it to Circle 10. Debtor alleges that on April 11, 2005, Circle 10 commenced a civil lawsuit for the deficiency balance of $15,199.36, plus attorney fees, interest and costs. She now seeks to include the deficiency balance on this reaffirmed debt in her chapter 7 case. Because there is no basis in law for the relief requested by Debtor, the motion to reopen is denied.

A chapter 7 discharge operates as an injunction against any attempt to collect any such debt listed in the debtor's petition as a personal liability of the debtor. 11 U.S.C. § 524(a)(2). Nevertheless a debtor may "reaffirm" a dischargeable debt with a creditor. Pursuant to § 524(c), "[r]eaffirmation contemplates a voluntary agreement between a creditor and the debtor whereby a debt which is otherwise dischargeable with respect to the personal liability of the debtor, is renegotiated or reaffirmed by both parties." *Taylor v. AGE Federal Credit Union (In re Taylor)*, 3 F.3d 1512, 1514 n.2 (11th Cir. 1993). The reaffirmation of a debt is a voluntary contract between debtor and creditor and cannot be required by the Court. *In re Pendlebury*, 94 B.R. 120 (Bankr. E.D. Tenn. 1988); *Vinson v. Farmer's Home Administration (In re Vinson)*, 5 B.R. 32 (Bankr. N.D.

Ga. 1980).

Debtor has not alleged that the reaffirmation agreement she entered into with Circle 10 is deficient, defective, or made involuntarily. The reaffirmation agreement, signed by Debtor, Debtor's counsel, and Circle 10's counsel and filed prior to the entry of discharge in this case, provides that Debtor reaffirms the indebtedness of $28,563.67 to Circle 10 for the purchase of a 2001 Chevy Tahoe, payable at the rate of $584.88 per month. The agreement provides that Debtor acknowledges and understands that she may rescind the agreement at any time prior to discharge or within 60 days after the agreement is filed with the court, whichever is later; that she acknowledges that the agreement is not required by bankruptcy or non-bankruptcy law; that she voluntarily enters into the agreement; and that it does not impose an undue hardship. On its face, the reaffirmation agreement complies with the requirements of 524.

There is no evidence before the Court that the Debtor timely rescinded the reaffirmation agreement as permitted by 524(c)(4). Once the time for rescinding a reaffirmation agreement has expired, the agreement "becomes enforceable to the same extent that it would have been enforceable had the bankruptcy never been filed." *In re McCreless*, 141 B.R. 223, 224 (Bankr. N.D. Fla. 1992). Having voluntarily reaffirmed the debt, the Debtor is liable to Circle 10 and cannot retroactively discharge this debt. Based on the foregoing, it is

ORDERED that Debtor's motion to reopen is **DENIED**; it is

FURTHER ORDERED that the Clerk is directed to refund the fee of $155 for the motion to reopen to Debtor's counsel on behalf of Debtor.

The Clerk is directed to serve copies of this Order on the persons on the attached Distribution List.

At Atlanta, Georgia, this 13 day of June, 2005.

PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

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