

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON DOCKET
JAN 12 2005

IN RE:

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CASE NO. 04-97665

Rita Smith,

CHAPTER 7

Debtor.

JUDGE MASSEY
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ORDER DENYING MOTION TO APPROVE REAFFIRMATION AGREEMENT

Wells Fargo Financial Acceptance moves for an order approving a reaffirmation agreement between it and Debtor Rita Smith. Because Ms. Smith is not represented by an attorney, section 523(c)(6) of the Bankruptcy Code requires the Court to examine the proposed reaffirmation and approve it only if it does not impose "an undue hardship on the debtor or a dependent of the debtor" and is "in the best interest of the debtor." The Court held a hearing on the motion on December 21, 2004.

The proposed reaffirmation agreement incorporates the terms of a contract that was not attached. Hence, the Court cannot determine whether letting Ms. Smith reaffirm the agreement makes any sense. Movant also failed to provide any information about the automobile to determine whether reassuming the debt makes any financial sense.

There is an even more difficult problem. In her schedules, Ms. Smith showed that her gross monthly income was \$1,800.00 and her average monthly expenses are \$1,811.91 not including payroll taxes and health or life insurance. Although two days after the hearing, Ms. Smith filed a handwritten income and expense statement showing she could make the payments,

she left off some expenses that she listed on her Schedule J, including electricity and telephone. She cut her food budget in half.

The terms that Wells Fargo disclosed to the Court are that Debtor would reassume a debt of \$19,548.66 at an annual interest rate of 15.8%. The monthly payment would be \$416.58. This tells us that the term of the loan is 72 months – 6 years. While in the early years of this loan, there might be less need for repairs, that is not so in later years, particularly with this make of car. Debtor's expense budget does not include sufficient funds for maintenance. The car payment, gasoline, maintenance, and cost of insurance would easily consume more than 33% of Ms. Smith's gross income. This is more than most people think wise for housing. Decent transportation may be purchased by Ms. Smith for a lot less money.

A major unanswered question is what this vehicle is worth. Using the NADA Guide on the Internet and assuming that this vehicle has 25,000 miles and is a model Sedan 4D EX, the RETAIL value is just over \$13,000. The highest value for the model Sedan 4D EX (V6) was \$14,425. The actual retail value might be somewhat higher if the vehicle has other fancy options. Ms. Smith cannot afford other fancy options.

In short, this contract, whatever its undisclosed terms might be, is emphatically not in the Debtor's best interest and would in very short order impose an impossible hardship on her. The Court is keenly aware that disapproval of this reaffirmation agreement may impose a hardship on her in the short run. Ms. Smith should attempt to buy an automobile from a reputable person and get it financed by a reputable lender. She should get help from a trusted friend concerning what to pay for a vehicle. Because Wells Fargo is unlikely to recover more than about \$12,000 for this

vehicle, the Court would approve a reaffirmation agreement if the debt were reduced to \$12,000, the interest rate were reduced to 9% and the term were reduced to 60 months.

Accordingly, it is

ORDERED that the motion to approve reaffirmation agreement filed by Wells Fargo Financial Acceptance is DENIED.

Dated: January 11, 2005.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE