

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: :
: CASE NO. 08-67230-JB
MATTHEW CORY FOREMAN and :
MICHELLE LYNN FOREMAN, :
: :
: CHAPTER 7
Debtors. :

ORDER

On October 2, 2008, Debtors Matthew Foreman and Michelle Foreman filed, through counsel Lesley Annis, a motion to reopen their Chapter 7 case in order to allow Debtors to rescind a Reaffirmation Agreement with DaimlerChrysler and surrender their interest in their 2006 Chrysler 300 (Docket #22). The Order discharging Debtors and closing the estate was entered on August 5, 2008. It does not appear from counsel's certificate of service, attached to Debtors' motion, that counsel served DaimlerChrysler with a copy of the motion.

Section 524(c) of the Bankruptcy Code governs the enforceability of reaffirmation agreements. Subsection (c)(4) deals specifically with the subject of rescission of a reaffirmation agreement and provides:

[a reaffirmation agreement is enforceable... if] the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of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[.]

11 U.S.C. § 524(c)(4). The statute provides that rescission occurs "by giving notice of rescission to the holder of such claim."

In the instant case, the Reaffirmation Agreement between Debtors and DaimlerChrysler was executed by both Debtors, counsel for Debtors, and DaimlerChrysler's agent, Kandace Stewart, and

was then filed on June 24, 2008. The date Debtors received their discharge was August 5, 2008, a date later than the filing of the Reaffirmation Agreement. Debtors had until October 4, 2008, sixty days after the entry of the discharge Order, to render the agreement unenforceable under § 524(c)(4) by giving notice of rescission to DaimlerChrysler. Debtors' motion to reopen does not state that they gave the required notice of rescission to DaimlerChrysler by October 4, 2008. If Debtors did not timely give notice of the rescission to DaimlerChrysler, the Court does not have the authority to allow Debtors to rescind the Reaffirmation Agreement. *In re Saunders*, 169 B.R. 192, 195 (Bankr. W.D.Mo. 1994) (after sixty days, Debtors are bound by Reaffirmation Agreement and Court is powerless to provide a remedy); *Ripple v. Boston Whaler Financial Services, Inc. (In re Ripple)*, 242 B.R. 60, 64-65 (Bankr. M.D.Fla. 1999). If Debtors did timely give notice to DaimlerChrysler, they must supplement the instant motion with appropriate facts by **November 10, 2008**. Counsel for Debtors should also be sure to properly serve DaimlerChrysler at all appropriate addresses, including the address shown on the Reaffirmation Agreement, with their motion to reopen and any supplement filed.

IT IS SO ORDERED, this 20th day of October, 2008.


JOYCE BIARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

Lesley Annis
Hait & Eichelzer
Suite 100
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Woodstock, GA 30188

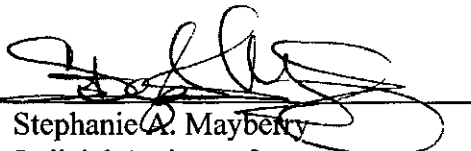
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Office of the US Trustee
Suite 362
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Atlanta, GA 30303


Stephanie A. Mayberry
Judicial Assistant for
Chief Judge Bihary

Mailed: 10/20/08