

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ENTERED ON  
AUG 18 2008  
DOCKET

IN RE: :  
: CASE NO. 08-71169-JB  
ROJAY V. HOWELL, :  
: :  
: CHAPTER 7  
Debtor. :

ORDER

On August 1, 2008, Debtor Rojay V. Howell filed *pro se* a motion to reaffirm a debt in the amount of \$7,795.47, in connection with a 2001 Lincoln Navigator ("Navigator") (Docket #21). Based on Debtor's SOFA and Schedules and creditor Branch Banking & Trust Company's ("BB&T") amended motion for relief from stay, filed on August 8, 2008, BB&T has a security interest in the Navigator and is owed the approximate principal amount of \$7,795.47, exclusive of attorneys' fees and costs. However, Debtor did not attach an executed Reaffirmation Agreement to this motion.<sup>1</sup> Before the Court can consider Debtor's request to reaffirm this debt, he must file the Reaffirmation Agreement with the Court.

Section 524 of the Bankruptcy Code governs a debtor's reaffirmation of a debt and requires certain circumstances to be met for the Reaffirmation Agreement to be enforceable, including the following:

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<sup>1</sup> A copy of the nine page Reaffirmation Agreement, Form 240A(1/07), can be obtained from the Court's web-site at [www.ganb.uscourts.gov/bapcpa/bapcpa\\_index.htm](http://www.ganb.uscourts.gov/bapcpa/bapcpa_index.htm), under the heading "Form 240A (Reaffirmation Agreement)(1/07)" or at the Office of the Bankruptcy Clerk, Richard B. Russell Federal Building, 13<sup>th</sup> Floor, 75 Spring St. S.W., Atlanta, Georgia 30303 for \$0.50/page.

- the Reaffirmation Agreement must be made before the discharge is granted;
- the creditor must make certain disclosures at the time of or before the debtor signs the Reaffirmation Agreement;
- the Court must find the Reaffirmation Agreement does not impose an undue hardship on debtor or dependent of the debtor and is in the best interests of the debtor.

11 U.S.C. § 524(c) (2006). With regard to this last requirement, there is a presumption of undue hardship if Part D of the Reaffirmation Agreement (a portion of the form to be completed and signed by the debtor) shows the debtor's monthly income less the debtor's monthly expenses is less than the scheduled payments of the debt to be reaffirmed. A debtor can, however, overcome the presumption by including on Part D a written explanation that identifies additional sources of funds to make the payments as agreed under the terms of the Reaffirmation Agreement.

In this case, Debtor and BB&T appear to agree on the approximate amount of the outstanding principal debt. If Debtor wishes to reaffirm this debt and believes he has the funds to make the payments, he would do well to promptly contact counsel for BB&T, Elizabeth A. Stuhldreher, who filed BB&T's relief from stay motion, and together complete and file the Reaffirmation Agreement with the Court by **September 10, 2008**. The Court will schedule a hearing once the Reaffirmation Agreement has been filed. If Debtor fails to timely file a proper Reaffirmation Agreement for his Navigator, his motion will be denied.

IT IS SO ORDERED this 15<sup>th</sup> day of August, 2008.

  
JOYCE BIHARY  
UNITED STATES BANKRUPTCY JUDGE

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