

SO ORDERED.

SIGNED this 31st day of August, 2017.



Benjamin A. Kahn

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:)	
)	
Brad Michael Macy and)	Case No. 17-80395
Katrina Grace Macy,)	
)	
Debtors.)	Chapter 7
_____)	

ORDER STRIKING REAFFIRMATION FORMS

This case is before the Court on the incomplete Official Forms 427 and 240A [Doc. #17] (collectively, the "Reaffirmation Forms") filed by counsel for Brad Macy and Katrina Macy ("Debtors") on August 17, 2017. The Reaffirmation Forms purport to reaffirm a debt between Debtors and World Omni Financial Corp. ("World Omni") for a 2017 Toyota Corolla under its contract terms. The male Debtor and Debtor's counsel signed the Reaffirmation Forms, but World Omni did not.

11 U.S.C. § 524(c) provides that "[a]n agreement between a holder of a claim and the debtor . . . is enforceable . . . if [among other requirements] . . . such agreement has been filed

with the court" (emphasis added). By requiring that the agreement be entered between the holder of the claim and the debtor, the Bankruptcy Code makes clear that the entry into such an agreement is voluntary. Neither the debtor nor the court may coerce the creditor into entering a reaffirmation agreement. See In re Amoakohene, 299 B.R. 196, 199-200 (Bankr. N.D. Ill. 2003) (quoting In re Hasek, 1997 WL 1050829, at *2 (N.D. Ill. 1997), for the proposition that "[t]he word 'agreement' typically refers to a voluntary, mutually agreed upon action between at least two people").

There is no provision in the Bankruptcy Code for filing reaffirmation forms that have not been entered between the claim holder and the debtor. The filing of the Reaffirmation Forms absent a signature by an authorized representative of World Omni is improper and of no effect, and serves only to complicate the docket and potentially confuse creditors. The Court has previously instructed counsel that this practice is improper, wastes court resources, and creates uncertainty with the vital and powerful discharge injunction, which is enforced through the Court's contempt powers.¹ The fact that it may become necessary

¹ Confusion in the record about whether enforceable reaffirmation agreements have been entered undermines confidence in the bankruptcy system and the discharge injunction. Attempts to enforce unauthorized agreements generally constitute a violation of the discharge injunction. See In re Cherry, 247 B.R. 176, 182-86 (Bankr. E.D. Va. 2000). Violations of the discharge injunction are punishable by contempt. See Id. at 186-89. As with all orders enforceable with the contempt powers of the courts, the terms and conditions of such orders must be clear and unambiguous. See In re Wilson,

for the debtor to establish that he timely complied with 11 U.S.C. § 521(a)(2) by timely completing, offering, and delivering a completed reaffirmation form to the creditor² is insufficient justification for filing incomplete and ineffective forms on the docket. Cf., Fed. R. Civ. P. 5(d)(1) (although requests for admission to which a timely response is not filed are deemed admitted, parties shall not file such requests "until they are used in the proceeding").

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Reaffirmation Forms are hereby stricken from the record in this case, and counsel is instructed not to continue this practice in cases pending before this judge.³

[End of Document]

248 B.R. 745, 751 (M.D.N.C. 2000) ("In order for civil contempt to be appropriate, the injunction issued by the court must be clear, unambiguous, and set forth in specific detail the behavior that is to be avoided." (citing Int'l Longshormen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n, 389 U.S. 64, 88 S.Ct. 201 (1967), for the proposition that "The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one.")). Therefore, by filing ineffective agreements, counsel is undermining not only the integrity of the bankruptcy system, but also potentially adversely affecting its clients' interests.

² See In re Perkins, 418 B.R. 680, 681-82 (Bankr. M.D.N.C. 2009), (citing, inter alia, Coastal Federal Credit Union v. Hardiman, 398 B.R. 161, 189 (E.D.N.C. 2008)).

³ Counsel may file a certificate of service reflecting timely service of completed reaffirmation forms which propose to reaffirm a debt upon the original terms of the agreement in the event it becomes necessary in the affected case to establish debtor's timely compliance with 11 U.S.C. § 521.

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