

SO ORDERED.

**SIGNED this 22nd day of February,
2021.**



Catharine R Aron

UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:)	
)	
Lydia Annette Jacobs,)	Case No. 20-80473
)	
Debtor.)	Chapter 7
_____)	

ORDER

This matter came before the Court for hearing on February 11, 2021 for consideration of a pro se reaffirmation agreement between Lydia Jacobs (the “Debtor”) and Ford Motor Credit Company LLC (the “Creditor”). The reaffirmation agreement purports to reaffirm the Debtor’s lease of a 2019 Ford Escape (the “Escape”). Because the Debtor was not represented by an attorney for purposes of this reaffirmation agreement, the Court was required to conduct a hearing conforming with the requirements of 11 U.S.C. § 524(c) and (d).¹ In addition, the Court reviewed the presumption of undue hardship as required by § 524(m). The Debtor and her chapter 7 bankruptcy counsel appeared at the hearing. No one appeared on behalf of the Creditor.

The Debtor commenced this case on October 10, 2020 by filing a voluntary petition for relief under chapter 7 of the United States Bankruptcy Code. In Schedule A/B, the Debtor listed the Escape as a “Leased vehicle” and, in Schedule G, listed a lease with the Creditor ending on September 4, 2022. On Part 2 of her Statement of Intention, a section reserved for unexpired personal property leases, the Debtor indicated she would be assuming that same lease with the Creditor. To date, the Creditor has not filed a proof of claim regarding its interest in the Escape.

¹ All citations to statutory sections refer to Title 11, United States Code, unless otherwise indicated.

The Debtor's Schedule I shows monthly income of \$897.00 while Schedule J shows monthly expenses of \$896.57, leaving net monthly income of \$0.43. The Debtor's income was derived entirely from unemployment benefits that were due to end in October 2020. The shoestring monthly budget reflected in Schedule J contains concerning low expenditures for food, medical expenses, and home maintenance. The Debtor also included a \$364.26 car payment for the Escape, which comprised over 40 percent of the Debtor's monthly budget.

On January 13, 2021, the Creditor filed the reaffirmation agreement on behalf of itself and the Debtor (Docket No. 13), which purports to reaffirm the Debtor's lease of the Escape. The executed lease, dated May 4, 2019, was attached to the reaffirmation agreement. The reaffirmation agreement was signed by the Debtor and the Creditor's attorney, but the Debtor's chapter 7 bankruptcy attorney declined to certify that the reaffirmation agreement would not impose an undue hardship on the Debtor.

The reaffirmation agreement reflects the Debtor would reaffirm \$8,342.24, to be payable in monthly installments of \$364.26 per month. The value of the Escape is listed as \$20,250. The reaffirmation agreement also contains income and expense figures for the Debtor that diverge from those provided in the Debtor's schedules. The reaffirmation agreement indicates the Debtor now has a monthly income of \$2,868.41 and monthly expenses of \$2,767.86, leaving net monthly income of \$100.55. By way of explanation, the reaffirmation agreement states the Debtor now has employment and additional income, but that her rent, utilities, food, clothing, and other expenses have increased as well. The Debtor did not attach amended schedules to the reaffirmation agreement, so the exact range of the Debtor's revised expenditures remains unclear.

At the hearing on February 11, 2021, the Debtor represented that she is now employed and asked that the Court allow the reaffirmation agreement. She also informed the Court she is current on the lease payments. Despite the Debtor's insistence that she has the resources to make the monthly payment on the Escape, the Court may only approve a reaffirmation agreement for a pro se debtor if the proposed agreement is in the debtor's best interest. 11 U.S.C. § 524(c)(6)(A). Under the proposed reaffirmation agreement, the Debtor is not only reaffirming the monthly payments totaling \$8,342.24, but also "additional amounts [under the lease agreement] which may come due[.]" These charges could include a disposition fee (in the event the Debtor does not purchase the Escape at the end of the lease term), an early termination fee, excess mileage

charges, and official fees and taxes. Given the uncertain status of the Debtor's current expenditures, the lack of any cushion in the Debtor's budget for unexpected expenses, and the additional fees and charges within the lease agreement, the Court cannot make a finding that the proposed reaffirmation agreement does not impose an undue hardship and is in the best interest of the Debtor.

Moreover, the Creditor and the Debtor have employed the wrong procedural mechanism to continue the lease agreement. While reaffirmation agreements are governed by § 524, lease assumptions by individual chapter 7 debtors are specifically provided for within the procedures of § 365(p), which was added to the Bankruptcy Code through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Section 365 establishes a three-step process for debtors to assume a lease. In order to assume a lease, (1) the debtor must "notify the creditor in writing that the debtor desires to assume the lease"; (2) the creditor may then "at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default"; and (3) "[i]f, not later than 30 days after notice is provided ...the debtor notifies the lessor in writing that the lease is assumed," then "the liability under the lease will be assumed by the debtor and not by the estate." 11 U.S.C. § 365(p)(2)(A)-(B). *See Bobka v. Toyota Motor Credit Corp.*, 968 F.3d 946, 954 (9th Cir. 2020). The statute does not require a chapter 7 debtor or the respective lessor to file a motion to assume the lease and the bankruptcy court has no role in the approval of a lease or its terms. *In re Giles*, No. 11-50864, 2012 Bankr. LEXIS 3672, at *1 (Bankr. M.D.N.C. Aug. 9, 2012); *In re Walker*, No. 06-11514, 2007 WL 1297112, at *1 (Bankr. M.D.N.C. Apr. 27, 2007). Instead of filing the instant reaffirmation agreement, the Debtor and Creditor would have been better served by assuming the lease through the established procedures of § 365(p).

For these reasons, and after considering the proposed reaffirmation agreement, the terms of the lease, and the representations of the Debtor at the hearing, the Court cannot make a finding that the lease is in the Debtor's best interest and does not impose an undue hardship.

Accordingly, IT IS HEREBY ORDERED that the reaffirmation agreement is disapproved.

END OF DOCUMENT

PARTIES TO BE SERVED

Lydia Jacobs (Ch.7)

20-80473

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