

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at ___ O'clock & ___ min. ___ M

APR - 2 1999

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (30)

IN RE:

Reginald Liston Nolan and Debbie Smith
Nolan,

Debtors.

C/A No. 98-09991-W

ORDER

Chapter 7

ENTERED

APR 5 1999

K.K.M.

This matter comes before the Court pursuant to a Motion for Hearing on a Reaffirmation Agreement filed by Green Tree Financial Corporation ("Green Tree") which seeks the Court's approval of a reaffirmation agreement signed by debtor Debbie Nolan and filed on March 16, 1999.

The Reaffirmation Agreement proposes to reaffirm an indebtedness to Green Tree in the amount of \$42,019.32 as of November 12, 1998 which is secured by a 1997 Bellcrest manufactured home. Counsel for the debtors refused to submit his declaration or an affidavit contemplated by 11 U.S.C. § 524(c)(3) and asserted at the hearing that he could not agree that the reaffirmation agreement represented a voluntary agreement of the debtors or that it did not impose an undue hardship on the debtors or their dependents. Upon inquiry of the debtors at the hearing, they indicated that they no longer wished to reaffirm the indebtedness with Green Tree.

By Consent Order entered January 27, 1999 in response to Green Tree's Motion for Relief from the Automatic Stay, the debtors agreed to catch up delinquent postpetition payments and further to "sign a reaffirmation agreement on or before January 31, 1999". In regards to the terms of that Order, debtors' counsel asserts that he did not agree to sign the reaffirmation agreement because he did not believe that such an agreement was in the best interests of the

debtors. Debtors' counsel maintains that the debtors had no choice but to agree to sign a reaffirmation agreement as provided in that Consent Order or lose their mobile home.

According to § 524 (c)(6), in the instance that the debtors are not represented by counsel during the negotiation of a reaffirmation agreement and certainly in the situation where the debtors' counsel refuses to sign such an agreement, the Court must approve the agreement for it to be effective. In that instance the agreement must not impose an undue hardship and must be in the best interests of the debtors.

In the circumstance presently before the Court, the debtors are apparently current in their payments to Green Tree (having been given a grace period as a result of the Consent Order) and do not desire to reaffirm the indebtedness, believing at the time of the hearing on the approval of the agreement that it is not in their best interests. This Court believes that in order for the reaffirmation process to be valid and the agreement enforceable, it must truly be both a voluntary and informed decision by the debtors. Exacting a reaffirmation agreement as a requirement of an order regarding relief from the automatic stay or other type of an order in the bankruptcy case in a circumstance in which the debtors have little choice or have an unequal bargaining position may render the agreement invalid.

Furthermore, § 524(c)(4) provides the debtors a right to rescind a reaffirmation agreement within sixty days after it is filed. The protection of a rescission period is intended to provide a debtor with a way out of such an agreement even if he enters into it voluntarily after an adequate opportunity to reconsider the decision to reaffirm. In this case, the debtors have indicated an intention to rescind the agreement even if it is approved. Without determining whether the debtors entered into the Consent Order provision regarding the reaffirmation agreement voluntarily, the Court will not compel the debtors at this point to carry out the reaffirmation if

they do not believe it is in their best interests.

Therefore under the circumstances of this case, the Reaffirmation Agreement filed on March 16, 1999 between the debtors and Green Tree is not approved.

AND IT IS SO ORDERED!


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,

April 2, 1999.

CERTIFICATE OF MAILING

The United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

APR 8 1999

Cox
Barr. E. F. id
Rm

✓
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KELLEY MORGAN

Deputy Clerk