

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT



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In re:

**Peggy Ann Dionne,  
Debtor.**

**Chapter 7 Case  
# 14-10345**

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**ORDER**  
**DENYING REAFFIRMATION AGREEMENT**

Pending before the Court is a reaffirmation agreement filed by American Honda Finance Corporation on behalf of Peggy Ann Dionne (the "Debtor") (doc. # 7). The reaffirmation agreement purports to reaffirm the Debtor's lease of an automobile.

This Court has previously addressed an attempt to reaffirm a lease or assume a lease through the filing of a reaffirmation agreement, and has held that this is not the appropriate procedure. See In re Hayden, 2014 Bankr. LEXIS 1791, 2014 WL 1612164 (Bankr. D. Vt. 2014). In Hayden, this Court examined two competing lines of case law dealing with the issue. The first line of case law hybridizes reaffirmation agreements, under 11 U.S.C. § 524(c), with assumptions of leases, under 11 U.S.C. § 365(p). See In re Eader, 426 B.R. 164 (Bankr. D. Md. 2010). Under these cases, a typical lease assumption agreement is merely a species of reaffirmation agreement. The Court found that the salient Bankruptcy Code provisions did not seem consistent with this conclusion and therefore did not follow this line of case law.

The second line of case law holds that reaffirmations and lease assumptions are statutorily distinct and warrant distinct treatment. See In re Ebbrecht, 451 B.R. 241 (Bankr. E.D.N.Y. 2011). The Court found this line of cases to be logically compelling and consistent with the intent and language of the Bankruptcy Code. Therefore, the Court held that in order to assume an unexpired lease of personal property, the debtor must follow the three-step procedure laid out in § 365(p). As the Court stated in Hayden,

Section 365 sets forth a distinct — and rather informal — three-step procedure for assuming a lease in Chapter 7: First, the debtor must express an interest in assuming the lease. Next, the lessor must respond that it is interested in allowing the debtor to assume the lease and set out its terms for continuing the lease with the debtor. Last, the debtor must accept the lessor's offer and terms of assumption. See 11 U.S.C. § 365(p)(2). Significantly, the statute imposes no requirement that a Chapter 7 debtor (or the putative lessor) file a

2014 Bankr. LEXIS 1791, \*10, 2014 WL 1612164, \*4.

Accordingly, IT IS HEREBY ORDERED that:

- 1) The reaffirmation agreement filed on August 19, 2014 is denied.
- 2) If the Debtor wishes to assume her automobile lease, she must follow the procedure set out in § 365(p)(2), and court approval is not required.

SO ORDERED.

August 19, 2014  
Burlington, Vermont



Colleen A. Brown  
United States Bankruptcy Judge

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<sup>1</sup> The Court additionally noted that parties in this District often wish to have court approval of agreements that do not require approval under the Bankruptcy Code and Rules. Therefore, although this Court's Local Rules do not require a Chapter 7 debtor file a motion to approve the assumption of a lease, they do provide a mechanism, Vt. LBR 6006-1, for obtaining a court order approving lease assumption, when the parties wish to have an order memorializing and approving their agreement.