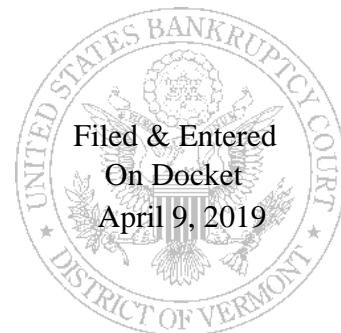


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**Kelly J. Thompson,
Debtor.**

**Chapter 7 Case
19-10037**

ORDER

DENYING REAFFIRMATION AGREEMENT AND NOTICE TO ACAR LEASING

Pending before the Court is a reaffirmation agreement filed by ACAR Leasing LTD d/b/a GM Financial Leasing (“ACAR Leasing”), on behalf of itself and Kelly Thompson (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 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 motion to assume the lease, or obtain court approval of the lease assumption or terms.¹

This is not the first time ACAR Leasing has filed a reaffirmation agreement purporting to reaffirm a debtor's lease of an automobile in this District. This is the fifth time ACAR Leasing has filed such an agreement in this Court over the last three years and, in each prior instance, the Court has issued this same order denying the reaffirmation. See In re Columbia, No. 18-10463 (Jan. 22, 2019, doc. # 14), In re Dean, No. 18-10350 (Oct. 19, 2018, doc. # 7), In re Ballou, No. 16-11327 (Sept. 23, 2016, doc. # 9), In re Prim, No. 15-11060 (Mar. 9, 2016, doc. # 8). It cannot claim it is unfamiliar with this Court's position on attempts to reaffirm automobile leases.

The Bankruptcy Rules declare that an attorney is prohibited from filing documents or pleadings in a bankruptcy court when s/he has reason to know the relief is not available under controlling law:


By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances ... the claims, defenses, and other legal contentions therein are warranted by existing law ...

Fed. R. Bankr. P. 9011(b)(2).

ACAR Leasing has now received the same order from this Court, on five separate occasions, explaining why this Court does not permit reaffirmation agreements to be used as the mechanism for assuming an automobile lease. If ACAR Leasing persists in filing similar lease reaffirmations in this District, it is hereby on notice that the Court will consider such conduct to be an act of contempt and determine whether sanctions are warranted under Rule 9011(c).

Accordingly, IT IS HEREBY ORDERED (1) approval of the subject reaffirmation agreement (doc. # 7) is denied; (2) if the Debtor wishes to assume her automobile lease, she must follow the procedure set out in § 365(p)(2), and may do so without court approval; (3) ACAR Leasing is on notice that this Court may consider imposing sanctions if it persists in filing motions to reaffirm automobile leases.

April 9, 2019
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge

ⁱ The Court also observed that parties in this District sometimes seek court approval of lease assumption agreements even though neither the Bankruptcy Code nor the Bankruptcy Rules require it. This Court's Local Rules set forth a procedure for the filing of a motion to approve assumption of a lease when the parties wish to have such an order. See Vt. LBR 6006-1.