

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

Christine MacGregor,
Debtor.

Chapter 7
Case # 19-10241

CORRECTED¹ ORDER
DENYING REAFFIRMATION AGREEMENT AND
ISSUING RULE 9011 NOTICE TO AMERICAN HONDA FINANCE CORP.

Pending before the Court is a reaffirmation agreement filed by American Honda Finance Corporation (“American Honda”), on behalf of itself and Christine MacGregor (the "Debtor") (doc. # 6). The reaffirmation agreement purports to reaffirm the Debtor’s lease of an automobile.

This Court has previously addressed attempts to reaffirm or assume a lease through the filing of a reaffirmation agreement, and has held 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 the salient Bankruptcy Code provisions were inconsistent with this conclusion and therefore did not follow this line of cases.

The second line of cases 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

¹ This Corrected Order changes the original Order dated August 16, 2019 (doc. # 7), in one respect only: it corrects a mistake in the last sentence of the first paragraph, changing “consistent” to “inconsistent.”

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.²

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

This is not the first time American Honda has filed a reaffirmation agreement purporting to reaffirm a debtor's lease of an automobile in this District. Rather, this is the **eighth** time within the last four years that American Honda has filed such an agreement with this Court and, in each prior instance, the Court has issued this same order denying the reaffirmation of the lease. See In re Bean, No. 18-10048 (Apr. 23, 2018, doc. # 9); In re Woodruff, No. 16-11498 (Feb. 16, 2017, doc. # 11); In re Callahan, No. 16-11447 (Jan. 12, 2017, doc. # 13); In re Plunkett, No. 16-11027 (Apr. 14, 2016, doc. # 24); In re Karhu, No. 15-11106 (Mar. 16, 2016, doc. # 21); In re Rodgers, No. 15-10418 (Feb. 25, 2016, doc. #24); In re Lussier, No. 15-10226 (Aug. 13, 2015, doc. # 12). Federal Bankruptcy Rule 9011(b) states:

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).


American Honda has now received the same order, on eight separate occasions, explaining the Court's interpretation of the legal basis for assuming an automobile lease. If American Honda files another lease reaffirmation in the future, it is hereby on notice that the Court will consider such conduct to be a violation of Rule 9011, an act of contempt, and likely to warrant sanctions under Rule 9011(c).

Accordingly, IT IS HEREBY ORDERED that:

- 1) The reaffirmation agreement filed on August 14, 2019 (doc. # 6), is DENIED.
- 2) If the Debtor wishes to assume her automobile lease, she must comply with this Order and follow the procedure set out in § 365(p)(2).

SO ORDERED.

November 18, 2019
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge

² 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.