



A handwritten signature in blue ink that reads "Neil P. Olack".

Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: June 21, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**LISA L. ADAMS,**

**CASE NO. 16-10729-NPO**

**DEBTOR.**

**CHAPTER 7**

**ORDER GRANTING SECOND MOTION FOR COURT  
APPROVAL OF SECOND REAFFIRMATION AGREEMENT  
BETWEEN DEBTOR AND CLEVELAND STATE BANK**

This matter came before the Court for hearing on the Motion for Court Approval of Reaffirmation Agreement (the "First Motion") (Dkt. 21) and the Motion for Court Approval of Reaffirmation Agreement (the "Second Motion") (Dkt. 32) on May 19, 2016 (the "May Hearing"), and June 16, 2016 (the "June Hearing" or, together with the May Hearing, the "Hearings"). At the Hearings, Michael W. Boyd represented Lisa L. Adams, the debtor (the "Debtor"), in the above-styled chapter 7 bankruptcy case (the "Bankruptcy Case"). After fully considering the matter, the Court finds as follows:

**Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(O).

## **Facts**

1. The Debtor initiated the Bankruptcy Case by filing a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code on March 1, 2016 (the “Petition”) (Dkt. 1).

2. The Debtor filed the First Motion on April 19, 2016. In the First Motion, the Debtor sought to reaffirm a debt on a 2011 Chevy Tahoe (the “Tahoe”) owed to Cleveland State Bank (the “First Reaffirmation Agreement”) (Dkt. 20) in the amount of \$39,557.10 at a 5.50% fixed rate of interest. (First Reaffirmation Agreement at 1). According to the First Reaffirmation Agreement, the Debtor would pay \$550.00 per month for thirty-six (36) months. (First Reaffirmation Agreement at 5). At the May Hearing, the Debtor testified that the First Reaffirmation Agreement included a balloon payment that would require her to pay \$20,000.00 after 36 months. According to the Debtor, two (2) months before she filed the Petition, Cleveland State Bank combined an unsecured loan with the secured loan for the Tahoe. The Debtor stated that Cleveland State Bank is her employer. The Court did not deny the First Motion but continued the May Hearing to allow the Debtor to attempt to reach a more favorable agreement with Cleveland State Bank.

3. On May 27, 2016, the Order of Discharge (the “Discharge Order”) (Dkt. 28) was entered in the Bankruptcy Case.

4. Subsequent to the Discharge Order, the Debtor filed the Second Motion. In the Second Motion, the Debtor sought to reaffirm the debt owed to Cleveland State Bank (the “Second Reaffirmation Agreement”) (Dkt. 31) on more favorable terms than the First Reaffirmation Agreement. Pursuant to the Second Reaffirmation Agreement, the Debtor agreed to pay \$29,000.00 to Cleveland State Bank at a 5.50% fixed rate of interest over sixty (60) months.

(Second Reaffirmation Agreement at 1). At the June Hearing, the Debtor stated that unlike the First Reaffirmation Agreement, the Second Reaffirmation Agreement does not include a balloon payment. Instead, the entire debt would be amortized over sixty (60) months.

### **Discussion**

When a debtor, like the Debtor in the Bankruptcy Case, is represented by an attorney, a reaffirmation agreement becomes effective and enforceable upon filing, if the requirements of § 524(c)<sup>1</sup> are satisfied. Pursuant to § 524(c), the following requirements must be satisfied in order for a reaffirmation agreement to be enforceable: (1) it must be made before the discharge is granted; (2) it must contain the disclosures set forth in § 524(k); and (3) it must be filed with the court and contain the required certifications. The Fifth Circuit Court of Appeals has stressed that the “reaffirmation rules are intended to protect debtors from compromising their fresh start by making unwise contracts to repay dischargeable debts.” *Sandburg Fin. Corp. v. Am. Rice, Inc. (In re Am. Rice)*, 448 F. App’x 415, 419 (5th Cir. 2011)(quotation omitted).

The Second Reaffirmation Agreement was signed *after* the Discharge Order was entered; however, the First Reaffirmation Agreement was unquestionably “made” prior to discharge. After the May Hearing, the Debtor and Cleveland State Bank were able to agree to more favorable terms that satisfied the Court’s concern that the First Reaffirmation Agreement was unfavorable to the Debtor. Because the Second Reaffirmation Agreement is between the same parties and involves the same collateral as the First Reaffirmation Agreement, the Court will treat the Second Reaffirmation Agreement as an amendment that relates back to the First Reaffirmation

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<sup>1</sup> All code sections refer to the Bankruptcy Code in title 11 of the U.S. Code unless stated otherwise.

Agreement.<sup>2</sup> Accordingly, the Court finds that the Second Reaffirmation Agreement was “made” prior to the date of the Discharge Order, and the elements of § 524(c) are satisfied. Accordingly, the Second Motion should be granted and the Second Reaffirmation Agreement should be approved.

IT IS, THEREFORE, ORDERED that the Second Motion is hereby granted.

IT IS FURTHER ORDERED that the Second Reaffirmation Agreement is hereby approved.

##END OF ORDER##

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<sup>2</sup> Pursuant to Federal Rule of Civil Procedure 15, as made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7015, an amended pleading “relates back” to the date the original pleading was filed “whenever the claim or defense asserted in the amended pleading arose out of the same conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading . . . .” FED. R. CIV. P. 15(c). Federal Rule of Bankruptcy Procedure 9014 (“Rule 9014”), which governs contested matters, grants the Court the authority, at any stage in a particular matter, to “direct that one or more of the other rules in Part VII shall apply.” FED. R. BANKR. P. 9014(c). Therefore, although Rule 9014 does not apply Rule 7015 in contested matters, the Court finds that Rule 7015 should apply to the Bankruptcy Case under these circumstances. Here, the Second Reaffirmation Agreement involves the same parties and the same collateral as the First Reaffirmation Agreement, the May Hearing was rescheduled prior to the Discharge Order for the specific purpose of allowing the parties to negotiate an amendment to the First Reaffirmation, and the Second Reaffirmation arose out of the same conduct, transaction, or occurrence as the First Reaffirmation Agreement. The Court will therefore treat the First Motion and the First Reaffirmation Agreement as having been amended.