

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

|                                   |   |                          |
|-----------------------------------|---|--------------------------|
| <b>IN RE:</b>                     | ) | <b>CHAPTER 7</b>         |
|                                   | ) |                          |
| <b>SCOTT &amp; SHARON WASHER,</b> | ) |                          |
|                                   | ) |                          |
|                                   | ) | <b>CASE NO. 05-73465</b> |
|                                   | ) |                          |
| <b>DEBTORS.</b>                   | ) |                          |

**MEMORANDUM DECISION**

The matter before the Court is the Motion to Rescind Discharge Order filed December 16, 2005 in which American Honda Financial Corporation (“AHFC”) requests the Court enter an order rescinding the discharge order entered on December 5, 2005 for the purpose of permitting reaffirmation of a debt pursuant to 11 U.S.C. § 524. After due consideration of the facts and circumstances of this case and the applicable law, the Court concludes that the Motion should be denied.

**FINDINGS OF FACT**

On September 9, 2005, the Debtors filed a voluntary joint petition for relief under Chapter 7 of the Bankruptcy Code. On November 2, 2005, the Trustee filed a No Asset Report. AHFC filed a Motion for Relief from Stay pursuant to 11 U.S.C. § 362(a), on November 15, 2005, seeking immediate possession of a 2000 Honda Odyssey, on which it had a valid and properly perfected lien.<sup>1</sup> On November 17, 2005, the Debtors responded to the Motion denying

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<sup>1</sup> The Motion for Relief was scheduled for hearing on December 7, 2005.

that grounds for relief from the automatic stay existed. The Debtors received their discharge on December 5, 2005. The Motion for Relief was heard on December 7, 2005 and continued at the request of the parties to January 4, 2006. AHFC filed the Motion to Rescind Discharge Order and submitted an agreed order to the Court for entry on December 16, 2005. The Court asked counsel for AHFC to submit authority which supports granting the Motion. The Court has reviewed the authority provided by AHFC's counsel and the matter is now ready for decision.

### CONCLUSIONS OF LAW

This Court has jurisdiction of this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. A motion to rescind the discharge order is a "core" bankruptcy matter pursuant to 28 U.S.C. § 157(b)(2)(O).

In this case, the creditor, AHFC, seeks to rescind the discharge order to permit the parties to enter into a reaffirmation agreement. 11 U.S.C. § 524(c)(1) provides that "[a]n agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable . . . only if such agreement was made before the granting of the discharge under section 727 . . . ." Consequently, reaffirmation agreements made after the discharge order is entered are not enforceable. Thus, AHFC can make the reaffirmation agreement enforceable against the Debtors only if the Court rescinds its December 5, 2005 discharge order. 11 U.S.C. § 727(d) provides that upon the request of a creditor, the court may revoke a discharge only if shown that the debtor has committed fraud or other acts of misconduct. Absent evidence of fraud or misconduct

on the part of the debtor sufficient to satisfy §727(d) or some showing that a discharge order was mistakenly entered, the Court cannot rescind the discharge order. AHFC's Motion to Rescind Discharge Order was filed for the express purpose of permitting reaffirmation of a debt under 11 U.S.C. §524. In *In re Eccleston*, 70 B.R. 210, 213 (Bankr. N.D. N.Y. 1986), the court stated “[u]nder no circumstances is Code §727(d) to be used as a vehicle for the revocation of a discharge for the ‘limited purpose’ of effectuating a reaffirmation agreement.” *See also In re McQuality*, 5 B.R. at 303 (finding no provision in §727(d) that the “desire to reaffirm a debt is cause for revocation of a discharge”).

AHFC's counsel asks the Court to follow the holding of the bankruptcy court in *In re Long*, 22 B.R. 152 (Bankr.D. Me. 1982) and rescind the discharge order based on the Court's inherent authority to vacate its own orders and the fact that both the Debtors and AHFC support the Motion. In *Long*, the debtors filed motions for approval of reaffirmation agreements entered into after the debtors had received their discharge. *Id.* at 152. The court determined that it had the power to vacate its discharge order pursuant to Fed. R. Civ. P. 60,<sup>2</sup> but warned that an order vacating the discharge order was not to become routine practice. *Id.* at 154. The *Long* court found support for vacating the debtors' discharge in *In re Solomon*, 15 B.R. 105 (Bankr. E.D. Pa. 1981). In *Solomon*, the debtors filed a motion for approval of a reaffirmation agreement just three days after they received their discharge. *Id.* at 106. The *Solomon* court concluded “there are sufficient equities in the instant case for us to vacate our prior order granting the debtors' discharge . . . .” *Id.* The court emphasized that the reaffirmation agreement was in settlement of litigation with a secured creditor that started more than a month before the

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<sup>2</sup> Fed. R. Civ. P. 60 is made applicable to this proceeding by Fed. R. Bankr. P. 9024.

discharge hearing and was not settled before that time. *Id.*

Relying on the court's inherent authority to vacate its own orders as done in *Long* and *Solomon* appears to be the minority view with respect to the validity of reaffirmation agreements entered into after the debtor has received his discharge. *See, e.g., In re McQuality*, 5 B.R. 302, 303 (Bankr. S.D. Oh. 1980) (concluding that pursuant to 11 U.S.C. § 524(c)(1), once the debtors were discharged, the court lacked jurisdiction to enter an order approving a reaffirmation agreement). As one court stated "a debtor seeking relief under [Fed. R. Civ. P. 60(b)] must show 'extraordinary' circumstances which prevented relief through usual channels." *In re Eccleston*, 70 B.R. 210, 213 (Bankr. N.D. N.Y. 1986). Unlike *Long* and *Solomon* where the debtors were seeking approval of a reaffirmation agreement, in this case AHFC, the creditor, is seeking relief so as to enable the debtor to reaffirm a debt under §524.

Neither Code §524(c), nor Fed. R. Bankr. P. 4004<sup>3</sup> provide for or imply that a creditor may apply to the Court for reaffirmation of the debt. . . . Debtor's apparent acquiescence to a new financial arrangement with the [creditor] cannot cloak the [creditor] with standing to seek the requested relief. Further, even if Debtor had commenced or somehow joined in the present motion, the record is devoid of evidence warranting vacation of his discharge.

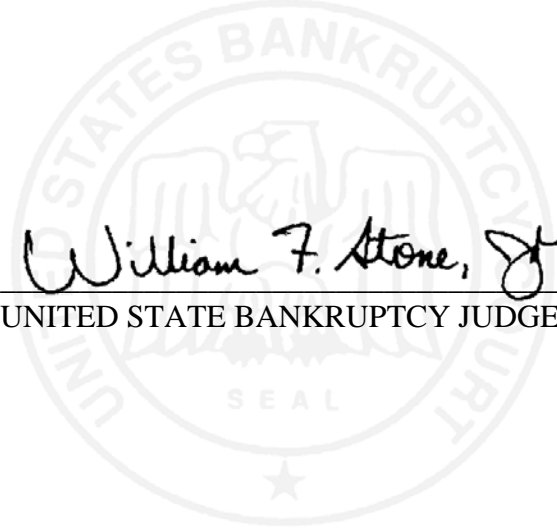
*Eccleston*, 70 B.R. at 213 (footnote added). In this case, the Motion does not state why the parties did not enter into a reaffirmation agreement or make any assertion that such agreement could not have been made before the discharge order was entered. For reasons sufficient to Congress it provided that reaffirmation agreements could be valid "only if" entered into prior to the granting of a discharge. 11 U.S.C. §524(c)(1). It is not the prerogative of either the parties or

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<sup>3</sup> Rule 4004(c)(2) provides that on debtor's motion, the court may defer entry of a discharge for thirty (30) days; if a second motion is made during that time, the entry of the discharge order may be deferred to a date certain.

this Court to nullify this provision by a bald effort to avoid, and indeed to disregard, its force and effect. Accordingly, the Court by separate order will deny AHFC's Motion to Rescind Discharge Order so as to permit the Debtors to enter into a reaffirmation agreement with it.

This 30th day of December, 2005.

The seal of the United States Bankruptcy Court is visible in the background, featuring an eagle with spread wings, a star, and the words "SEAL" and "UNITED STATES BANKRUPTCY COURT".  
William F. Stone, Jr.  
UNITED STATE BANKRUPTCY JUDGE