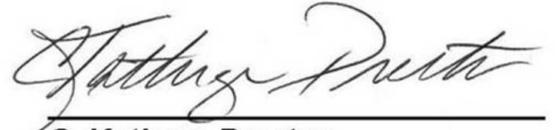


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: August 13, 2007



C. Kathryn Preston
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: : Case No. 07-54058
Paul A. Robinson : Chapter 7
Debtor(s) : Judge Preston

**ORDER DENYING APPROVAL OF THE STIPULATION
FOR ASSUMPTION OF THE LEASE AGREEMENT**

This matter comes before the Court on the Stipulation for Assumption of the Lease Agreement between the Debtor, Paul A. Robinson, and the Creditor, Cab East LLC, filed on July 9, 2007 (Doc. #16, 17) pertaining to the lease of a 2006 Ford Fusion.

Having reviewed the Stipulation and the file, the Court finds and concludes as follows:

The Debtor filed his Chapter 7 Petition for Relief on May 29, 2007. In Schedules B and G, the Debtor acknowledges his leasehold interest in a 2006 Ford Fusion and the existence of the lease agreement.¹ The Debtor's Statement of Intention (Doc. # 6), which was filed with the Petition, indicates that he intends to assume the lease pertaining to the 2006 Ford Fusion. Schedules I and J show that the Debtor's monthly expenses exceed his income when the lease payment is included.

On July 9, 2007, a Stipulation for Assumption of the Lease Agreement (Doc. #16) ("Stipulation") and a copy of the Lease Assumption Agreement (Doc. #17) ("Agreement") between the Debtor and Cab East LLC were filed with the Court. The Agreement provides that the lease will be assumed pursuant to 11 U.S.C. § 365(p) and states that any protection afforded under 11 U.S.C. § 524(a) does not apply to the lease. The Agreement further states that the Debtor will obtain an order from this Court "assuming the Lease as my/our personal obligation..." Neither the Stipulation nor the Agreement contain the information and disclosures set forth in Section 524 or meet the substantive requirements for a reaffirmation agreement under Section 524(c).

Section 365(p)(2) of the Bankruptcy Code provides in pertinent part as follows:

(A) If the debtor in a case under Chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

¹Schedule G states that the Lease Agreement was with Ford Credit. However, the Lease Assumption Agreement states that the lessor is Cab East LLC. No explanation is given or is apparent from the record to explain this anomaly. The Court can only assume that Cab East is the real party in interest since the Debtor entered into the Agreement so indicating.

(B) If, not later than 30 days after notice is provided under subparagraph(A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

11 U.S.C. § 365(p)(2).

Section 365(p) permits Chapter 7 debtors to “assume” leases of personal property. The statute intends to permit a debtor to exercise a right that would otherwise be limited to the Chapter 7 trustee. The Bankruptcy Code does not require court approval (or even filing) of an assumption agreement. The Code does, however, require approval of an agreement to reaffirm a debt under certain circumstances. The question is whether assumption of a lease is governed by Section 524 of the Bankruptcy Code.

Section 524(c) provides in pertinent part as follows:

(c) An 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 to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived. . .

11 U.S.C. § 524(c).

Section 524(c) applies to agreements pertaining to all types of pre-petition debt. The term “debt” means “liability on a claim.” 11 U.S.C. § 101(12). A “claim” is defined as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured . . .” 11 U.S.C. § 101(5)(A). The obligations under a lease fall within the definition of a claim, even though it may be unliquidated and contingent. Therefore, although Section 524 does not mention leases specifically, a lease is the type of obligation included within Section 524(c).

The amendments to Section 524 wrought by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) imposed broad new conditions and disclosures in connection with reaffirmation agreements. Therefore, evidently Congress had concluded that debtors required *more* protection in the reaffirmation process. Inasmuch as a lease is a financial obligation, it would not be logical for Congress to permit parties in a lease agreement to disregard the procedures and requirements of reaffirmation under Section 524. Thus, this Court must conclude that Congress did not intend to supplant those procedures and requirements of Section 524 with the noticing procedures outlined in Section 365(p) or obviate the protections afforded to the Debtor under Section 524 in connection with reaffirmation of a debt.

This Court finds that a lease of personal property is an “agreement between a holder of a claim and the debtor” within the meaning of Section 524(c); therefore, assumption of such an agreement is subject to and must be coupled with a reaffirmation agreement complying with Section 524(c). In re Creighton, 2007 WL 541622 (Bankr. D. Mass. Feb. 16, 2007); In re Finch, 2006 WL 3900111 (Bankr. D. Colo. Oct. 2, 2006). Accordingly, it is

ORDERED AND ADJUDGED that the Stipulation for Assumption of the Lease Agreement between the Debtor and Creditor Cab East LLC (Doc. #16) is NOT APPROVED. This order is without prejudice to the Debtor to file a reaffirmation agreement that complies with Section 524.

IT IS SO ORDERED.

Copies to:

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Cab East, LLC, c/o Cynthia A. Jeffrey, Reimer, Lorber & Arnovitz Co., LPA, 2450 Edison
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