

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
MICHAEL MAYS and
STACI MAYS,
Debtors.

No. 7-08-12638 SL

**ORDER DISAPPROVING REAFFIRMATION AGREEMENT
WITH WELLS FARGO FINANCIAL NATIONAL BANK (DOC 9)**

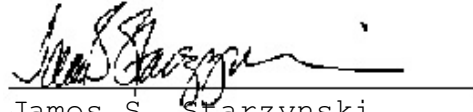
The proposed reaffirmation agreement between Debtors Michael Mays and Staci Mays and Creditor Wells Fargo Financial National Bank (doc 9) came before the Court for a hearing pursuant to §524(m) on November 25, 2008. Debtors were present; no one appeared for Creditor. Having reviewed the file and the proposed agreement, the Court finds that the agreement should be disapproved.

The Court considers that reaffirmation agreements (reaffirming otherwise dischargeable claims) exist largely to benefit creditors, since the agreements in effect convert non-recourse debt back into recourse debt. Section 524(f) explicitly permits a debtor to voluntarily repay a debt and nothing prevents a creditor from permitting a debtor to continue to possess and use the collateral until it is paid off. In consequence, the Court considers that it is the creditor's burden to assure that a reaffirmation agreement submitted to the Court is fully and accurately completed in accordance with §524 and Rule 4008, F.R.B.P. This burden is further justified by the fact that it is almost always the case that creditors, who deal with reaffirmations on a daily basis, have the requisite expertise and resources to ensure that reaffirmation agreements are correctly filled out, even if that means the creditor must return an agreement to a debtor for correction (such as Part D) before filing it with the Court. In consequence, this Court frequently disapproves or refuses to approve agreements which fail to meet the requirements of the statute or the rule. E.g., In re Neatherlin, No. 08-10465, United States Bankruptcy Court, District of New Mexico (doc 17), entered April 24, 2008. On the other hand, the Court will usually approve an agreement which provides a substantial benefit to the debtor, such as a significantly lower principal balance and interest rate which is as good as or better than debtor might be able to negotiate in the market postpetition, even if the formal requirements of the statute and rule have not been met.

In the instant case, the agreement fails to comply with Fed.R.B.P. 4008 in that it does not set out in Part D of the agreement what are the analogous numbers from Schedules I and J, and does not explain the discrepancy between those numbers. In addition, the "No Presumption of Undue Hardship" box on the first

page is inaccurately checked in light of the Schedule I and J numbers, and Part D does not disclose any additional source of income to make the required payments contrary to §524(m). Further, the agreement does not disclose whether the collateral (furniture) is even secured to repayment of the debt.

IT IS THEREFORE ORDERED that the reaffirmation agreement is disapproved.¹



James S. Starzynski
United States Bankruptcy Judge

Date Entered on Docket: December 8, 2008

COPY TO :

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¹ In making this ruling, this Court is not suggesting in any way that if a court does not approve or if it disapproves a reaffirmation agreement, the creditor has the right, whether under federal or state law, to repossess the furniture (assuming the debtor has continued to make payments). See In re Husain, 364 B.R. 211 (Bankr. E.D. Va. 2007) and In re Baker, 390 B.R. 524 (Bankr. D. Del. 2008), appeal docketed U.S. District Court June 20, 2008; contra, In re Milby, 389 B.R. 466 (Bankr. W.D. Va. 2008) (bankruptcy court had no jurisdiction to declare compliance with statutory reaffirmation obligations, and alternatively finding that the debtor did not enter into the reaffirmation agreement in good faith when the debtor's only purpose was to satisfy the statutory requirements necessary to preclude the operation of §§521(a)(6) and 362(h)).