

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
GREGORY EUGENE HITZFIELD ) CASE NO. 06-12306  
 )  
 )  
Debtor )

**DECISION**

At Fort Wayne, Indiana, on May 18, 2007.

In this chapter 7 case the debtor and Ford Motor Credit Company filed a joint motion asking the court to approve the debtor's assumption of a motor vehicle lease with Ford Motor Credit. Although the recent amendments to the Bankruptcy Code provide a mechanism by which this can be accomplished, see, 11 U.S.C. § 365(p)(2), neither the Bankruptcy Code nor the rules of procedure provide for court approval of such an assumption. Accordingly, on its own initiative, the court scheduled the joint motion for a hearing so that it could consider three specific issues:

1. Whether a chapter 7 debtor's assumption of a lease requires the approval of the court;
2. Whether an agreement between a creditor and a chapter 7 debtor for the debtor's assumption of a lease must comply with the requirements of § 524 concerning reaffirmations; and, if so,
3. Whether the agreement between Ford Motor Credit and the debtor complies with those requirements.

The hearing took place as scheduled, as a result of which counsel for Ford Motor Credit asked for the opportunity to file briefs directed to these issues. Counsel was given thirty days within which to do so, see, Order of April 13, 2007, and, when that time passed without any briefs being filed, the court took the matter under advisement.

Four published decisions have confronted, in one fashion or another, the issues before the court: See, In re Creighton, 2007 WL 54162 (Bankr. D. Mass. 2007); In re Walker, 2007 WL 1297112 (Bankr. M.D. N.C. (2007)); In re Rogers, 359 B.R. 591 (Bankr. D. S.C. 2007); In re Finch, 2006 WL 3900111 (Bankr. D. Colo. 2006). All of them conclude that debtor's assumption of a lease does not require court approval and, instead, that assumption is accomplished through the exchange of notices specified by the statute. Furthermore, two of them, Finch, in passing, and Creighton, much more thoroughly, conclude that, absent compliance with the requirements of § 524(c), assumption is not the equivalent of reaffirmation, and assumption alone is not sufficient to revive a lease liability that would otherwise be discharged. Because of the absence of any briefs directed to these issues, the parties have given the court no reason not to follow these authorities. Accordingly, the court holds that a chapter 7 debtor's assumption of a lease under § 365(p)(2) does not require court approval and that, unless the parties' agreement to assume complies with the requirements of § 524(c) concerning reaffirmation agreements, the act of assumption is not sufficient to revive the debtor's liability on a lease which is otherwise discharged.

The final issue before the court is whether the agreement between Ford Motor Credit and the debtor complies with the requirements of § 524(c) and here there can be no argument that it clearly does not.

In light of the foregoing, the joint motion to approve lease assumption filed by the debtor and Ford Motor Credit will be denied. An appropriate order will be entered.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court