

Take Time (or Ask for It) to Negotiate Reaffs or Explore Redemption Option

By Judge Catherine Peek McEwen

With Case Summaries by Michael Gibson, Judicial Intern

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Consumer debtor lawyers and pro se debtors often overlook the tool of negotiation and the option of redemption when it comes to reaffirmation agreements. But it's not too late to explore those alternatives to a straight up reaffirmation agreement even if the time of the hearing to approve the agreement is upon you. At the hearing, just ask for a new setting, and the Court may allow the debtor time to try something else and come back in the future by phone.

Particularly when it looks like the judge may not approve a reaffirmation agreement, both the debtor and creditor have a mutual incentive to look for a fallback position. If the judge hates the interest rate and indicates a reluctance to approve the agreement and says (as Judge Jennemann is reported to have said), "just blame it on the judge" when you go back to the creditor to negotiate a different deal, sometimes the result is favorable for both parties.

A recent reaffirmation agreement docket yielded three successful come-backs in my courtroom after the debtors had learned, at their first hearing, about the effect of a reaffirmation agreement and alternatives to reaffirming on the same terms as the original loan and were given a continuance to explore those alternatives. The come-backs, at least in my courtroom, take place immediately before a new crop of first-timers to reaffirmation hearings, so that the first-timers can learn by listening.

The success stories the recent docket yielded are summarized below. The creditor in each case came away with either an approved reaffirmation agreement instead of none or a lump-sum payment of the full value of its collateral. The debtors came away with more affordable terms. That's a win-win result. But you can't get such a result unless you take the time to negotiate or compare redemption pricing with what's on the table.

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In this case, the court provided the debtor with information regarding the ability to refinance her vehicle through 722 Redemption Funding, Inc. Through this program, the debtor was allowed to keep her vehicle by paying fair market value to the creditor for the vehicle's worth, which in many cases, is less than the actual amount owed. This program allows a debtor to lower the monthly payments or potentially reduce the number of payments over time. Prior to this program, the debtor owed approximately \$46,500 on her vehicle. Upon completion of the 722 Redemption Program, the debtor now owes \$22,000 on her vehicle.

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In this case, the court provided the debtor with the education and opportunity to negotiate for a refinance with the creditor on his vehicle. The debtor was able to successfully negotiate a reduction in interest rate from 14.75 percent to 10.00 percent, realizing a 4.75 percent savings.

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In this case, the court provided the debtors with the education and opportunity to negotiate for a refinance with the creditor on their vehicle. The debtors were able to successfully negotiate a reduction in their interest rate from 25 percent to 15 percent, realizing a 10 percent interest rate savings. In addition, the debtors were also able to reduce the total amount owed from \$10,811.00 to \$8,500.00, realizing a savings of approximately \$2,311.00.