



Make Me Smile Moments: Reaffirming the Value of a Frank Talk About Reaffs

By Honorable Catherine Peek McEwen

In this issue I report four success stories involving two pro se debtors and two represented debtors who initially *thought* they should reaffirm a debt. In three of the four cases (including the two in which the debtors were represented), the presumption of hardship was present due to those debtors' income versus expenses. When given a chance for a continued hearing after learning their options, here's what these smart debtors did:

1. A debtor who was about \$6,500 upside down on a car loan and had a 22.81 percent interest rate tried to negotiate with her lender for a principal reduction and/or interest rate reduction (a redemption loan was not an option for her). At her come-back hearing, she reported that her request fell on deaf ears. Too bad for the lender. The debtor used her noggin and elected to surrender the car. She said she will get another car that is affordable after she gets a discharge and take another form of transportation in the meantime.
2. A debtor who is a wedding disc jockey had a truck loan that exceeded the value of the truck by almost \$13,000 and had an interest rate of 25.1 percent. He couldn't get approved for a redemption loan, so he tried to bargain with his lender and reported back that the lender wouldn't budge. He decided the reaff was a bad deal for him, elected to turn in the truck, and thanked me for opening his eyes. He said he would rent a truck for his gigs, which are now rare given the pandemic and social distancing.

3. Debtors who were represented by counsel signed a reaffirmation agreement calling for repayment of a loan of a little more than \$28,000 secured by a late model car worth only \$12,300 (and at a 16.78 percent interest rate), an upside-down difference of nearly \$16,000! Clearly this was a case crying for an attempt at a redemption. Armed with information about redemption loans, this couple was ultimately able to redeem the car.
4. A debtor who was represented by counsel signed a reaffirmation agreement calling for repayment of a loan of almost \$22,000 secured by a late model car worth \$10,500 (and at a 16.78 percent interest rate), an upside-down difference of nearly \$11,500. Again, armed with information about the redemption alternative, the debtor was able to redeem the car at the \$10,500 figure, which was more than \$2,000 *less than* the value stated by the lender in the reaff!

Lessons to be learned from these examples:

1. Lenders might ought to negotiate lest they get caught holding the bag on an underwater loan.
2. Some lenders misstate the value in reaffs.
3. Debtors' counsel need to bone up on redemption lenders and the redemption process and not blindly recommend signing a reaff that is wildly upside down.
4. Pro se debtors listen, so judges should take the opportunity to speak.