

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

CASE NO.: 06-02241-3P7

STEVEN MATTHEW BLAKE  
EMILY ANN BLAKE,

Debtors.

**ORDER DENYING FORD MOTOR CREDIT  
COMPANY'S REQUEST FOR HEARING TO  
REVIEW REAFFIRMATION AGREEMENT**

This case came before the Court upon Ford Motor Credit Company's ("Movant") Request for Hearing to Review Reaffirmation Agreement ("Request for Hearing"). Debtors filed for relief under Chapter 7 of the Bankruptcy Code on July 28, 2006. Shortly thereafter, Debtors and Movant executed a reaffirmation agreement. (Docket No. 10.)

Reaffirmation agreements are governed by § 524(c) of the Bankruptcy Code, which permits debtors to reaffirm a debt owed to a creditor while excusing such creditor from the consequences of a debtor's discharge. Section 524(c)(2) states that a debtor must receive the appropriate § 524(k) disclosures at the same time or before the debtor enters into a reaffirmation agreement. 11 U.S.C. § 524(c)(2) (2006). If the debtor is represented by an attorney, according to § 524(k)(5), the attorney must attest that the reaffirmation agreement is in the best interests of the debtor, and that the agreement does not impose an undue hardship on the debtor. 11 U.S.C. § 524(k)(5) (2006). If, however, there is a presumption of an undue hardship, the attorney must certify that in the attorney's opinion, the debtor is capable of making such payments as required by the reaffirmation agreement. 11 U.S.C. § 524(k)(5)(B) (2006). A presumption of undue hardship occurs when the debtor does not have sufficient funds to make the required reaffirmation payments.

In the instant case, Debtors' attorney initially failed to certify whether the agreement presented a presumption of undue hardship. Since then, however, Debtors' attorney amended such certification to reflect that there was no presumption of undue hardship. Debtors' Schedules I and J establish that there is a negative monthly income of

\$1,016.91, which constitutes a presumption of undue hardship. Movant requests that the Court review the reaffirmation agreement and either approve or deny it based upon the Court's judgment that the agreement is in the best interest of Debtors and does not constitute an undue burden.

Given the language of § 524, the Court believes that Congress did not intend for judges to review reaffirmation agreements when the debtor has been represented by an attorney. However, if a debtor is acting on his or her own behalf, then the Court is required to examine the reaffirmation agreement and decide whether such agreement is in the best interests of the debtor, and if it presents an undue hardship that would prevent the debtor from being able to make the required payments. Such is not the case here. Debtors were represented by counsel when they entered into the reaffirmation agreement with Movant. Further, if the Court set a hearing on this matter responsibility for the reaffirmation would reside with the Court, rather than Debtors' attorney, as intended by Congress.

Thus, the Court will not hold a hearing on this matter. Based on the foregoing, it is

**ORDERED:**

Movant's Request for Hearing is denied.

**DATED** this 13 day of November, 2006 in Jacksonville, Florida.

/s/ Jerry A. Funk

**JERRY A. FUNK**

**United States Bankruptcy Judge**

**Copies furnished to:**

Wayne M. Singletary, Esq., Attorney for Movant  
Daniel P. Delves, Esq., Debtors' Attorney  
Steven Matthew and Emily Ann Blake, Debtors  
Gregory K. Crews, Trustee