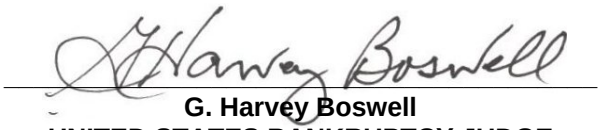
Not intended for publication

Dated: March 25, 2004
The following is SO ORDERED.



G. Harvey Boswell
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE

Wanda K. Autry, **Case No. 00-12340**

debtor. **Chapter 7**

MEMORANDUM OPINION AND ORDER RE
(1) DEBTOR'S MOTION FOR CONTEMPT AND TO ENFORCE DISCHARGE and
(2) FIRST CITIZENS NATIONAL BANK'S OBJECTION THERETO

The Court conducted a hearing pursuant to FED. R. BANKR. P. 9014 on the Debtor's Motion for Contempt and Motion to Enforce Discharge and First Citizen National Bank's objection thereto on February 11, 2004. Resolution of these matters is a core proceeding. 28 U.S.C. § 157(b)(2). The Court has reviewed the testimony from the hearing and the record as a whole. This Memorandum Opinion and Order shall serve as the Court's findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

FINDINGS OF FACT

Prior to filing for bankruptcy relief, the debtor in this case, Wanda Autry, ("Autry"), obtained a loan from First Citizens National Bank, ("Bank"), in the amount of $3,364.56. Said loan was executed on June 7, 1999, and was secured by a lien on the debtor's 1991 Pontiac Grand Am. In addition to this loan, the Bank also issued Autry a Mastercard. The Mastercard agreement contained the following cross-collateralization language:

> If you have other loans from Issuer, or take out other loans with Issuer in the future, collateral securing those loans will also secure your obligations under this agreement.

Trial Exhibit 1, paragraph 11. No proof was introduced at the hearing as to when the Bank issued the Mastercard to the debtor.

On July 6, 2000, Autry filed the case at bar. Autry originally filed under chapter 13, but voluntarily converted to chapter 7 on August 1, 2000. In both her chapter 13 and her chapter 7 petitions, Autry listed the Bank on schedules D and F. The Bank was listed on schedule D with a secured claim of $2,243.00 for the 1991 Pontiac. The Bank was listed on schedule F with an unsecured claim of $1,478.52 for the Mastercard. According to schedule I, Autry was unemployed at the time of filing.

On August 29, 2000, the debtor entered into a reaffirmation agreement with the Bank.[1] The pertinent part of the agreement reads as follows:

> Wanda K. Autry, Debtor, hereby reaffirms the indebtedness due First Citizens National Bank, Creditor herein, and agrees to comply with all the terms set forth in the instruments on which the indebtedness and security interest are based, and further agrees to pay Creditor the sum of $1,800.82 the payoff balance due plus accruing interest at the rate set forth in the instruments all of which is payable at the rate of $93.46 per month until fully paid, beginning on or before August 29, 2000, and Debtor waives discharge of this debt.

The reaffirmation agreement was prepared by the Bank. The agreement does not specify which note and/or notes the debtor is reaffirming, nor is there any reference to collateral in the agreement. At the hearing on this matter, both parties stated that the collateral contemplated by the reaffirmation agreement was the 1991 Pontiac Grand Am. No proof was introduced as to the value of the Pontiac. The debtor's attorney signed the reaffirmation agreement indicating that he represented the debtor during the negotiation of the agreement and that he fully advised the debtor of the legal effect and consequences of signing the agreement.

The debtor received her chapter 7 discharge on November 6, 2000. Following her discharge, Autry continued to pay the Bank pursuant to the terms of the reaffirmation agreement. After paying the $1,800.82 in full, the debtor asked the Bank to release their lien on the car. The Bank refused and informed Autry that she would have to pay the Mastercard debt before they would release the title to the car. On October 21, 2003, the Debtor filed a Motion for Contempt and to Enforce Discharge against the Bank.

At the hearing in this matter, the Bank asserted their position that the reaffirmation agreement only addressed the $3,364.56 note secured by the 1991 Pontiac Grand Am. The Bank further asserted

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[1] The agreement was filed with the Court on September 5, 2000.

that, because of the cross collateralization language in the Mastercard agreement, the Bank retained an in rem lien against the car following the debtor's chapter 7 discharge. The Bank has not taken any action to enforce their lien.

II. CONCLUSIONS OF LAW

As Judge Brown stated in the case of *In re Ollie*, 207 B.R. 586 (Bankr. W.D. Tenn. 1997), "a reaffirmation agreement is a contract that establishes a new repayment obligation, and the law governing such contracts is the 'applicable nonbankruptcy law.'" *Id.* at 587 (citing 11 U.S.C. § 524©)); *See also Mandrell v. Ford Motor Credit Co. (In re Mandrell)*, 50 B.R. 593, 595 (Bankr. M.D.Tenn. 1985). In order for the Court to determine whether or not the debtor in this case reaffirmed both the car loan and the Mastercard debt or only the car loan, the Court must look to Tennessee law on contract interpretation. If the reaffirmation agreement encompassed both the car loan and the Mastercard debt, the debtor's payment in full of the $1,800.82 entitles her to have the lien released on the car.

> Under Tennessee law, the principles of contract interpretation are well-settled:
>
> Interpretation of a written contract is a matter of law, rather than a matter of fact. *See Hamblen County v. City of Morristown,* 656 S.W.2d 331, 335-36 (Tenn.1983); *Standard Fire Ins. v. Chester O'Donley & Assocs., Inc.,* 972 S.W.2d 1, 5-6 (Tenn. Ct. App.1998). The purpose of interpreting a written contract is to ascertain and to give effect to the contracting parties' intentions. *See Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc.,* 521 S.W.2d 578, 580 (Tenn.1975); *Gredig v. Tennessee Farmers Mut. Ins. Co.,* 891 S.W.2d 909, 912 (Tenn. Ct. App.1994). In the case of written contracts, these intentions are reflected in the contract itself. Thus, the search for the contracting parties' intent should focus on the four corners of the contract, *see Whitehaven Community Baptist Church v. Holloway,* 973 S.W.2d 592, 596 (Tenn.1998); *Hall v. Jeffers,* 767 S.W.2d 654, 657-58 (Tenn. Ct. App.1988), and the circumstances in which the contract was made. *See Penske Truck Leasing Co. v. Huddleston,* 795 S.W.2d 669, 671 (Tenn.1990); *Pinson & Assocs. Ins. Agency, Inc. v. Kreal,* 800 S.W.2d 486, 487 (Tenn. Ct. App.1990).
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> In the absence of fraud or mistake, courts should construe contracts as written. *See Frank Rudy Heirs Assocs. v. Sholodge, Inc.,* 967 S.W.2d 810, 814 (Tenn. Ct. App.1997); *Whaley v. Underwood,* 922 S.W.2d 110, 112 (Tenn. Ct. App.1995). The courts should accord contractual terms their natural and ordinary meaning, *see Evco Corp. v. Ross,* 528 S.W.2d 20, 23 (Tenn.1975), and should construe them in the context of the entire contract. *See Wilson v. Moore,* 929 S.W.2d 367, 373 (Tenn. Ct. App.1996); *Rainey v. Stansell,* 836 S.W.2d 117, 119 (Tenn. Ct. App.1992). The courts should also avoid strained constructions that create ambiguities where none exist. *See Hillsboro Plaza Enters. v. Moon,* 860 S.W.2d 45, 47-48 (Tenn. Ct. App.1993).
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> The courts may not make a new contract for parties who have spoken for themselves, *see Petty v. Sloan,* 197 Tenn. 630, 640, 277 S.W.2d 355, 359 (1955), and may not relieve parties of their contractual obligations simply because these obligations later prove to be burdensome or unwise. *See Atkins v. Kirkpatrick,* 823 S.W.2d 547, 553 (Tenn. Ct. App.1991). Thus, when called upon to interpret a contract, the courts may not favor either party. *See Heyer-Jordan & Assocs., Inc. v. Jordan,* 801 S.W.2d 814, 821 (Tenn.

> Ct. App.1990). **However, when a contract contains ambiguous or vague provisions, these provisions will be construed against the party responsible for drafting them**. *See Hanover Ins. Co. v. Haney,* 221 Tenn. 148, 153-54, 425 S.W.2d 590, 592-93 (1968); *Burks v. Belz- Wilson Properties,* 958 S.W.2d 773, 777 (Tenn. Ct. App.1997).

Realty Shop, Inc. v. RR Westminster Holding, Inc., 7 S.W.3d 581, 597 -598 (Tenn.Ct.App.,1999) (emphasis added).

In the case at bar, the reaffirmation agreement between the debtor and the bank is one of the vaguest this Court has ever seen. The agreement does not specify which accounts are being reaffirmed. It simply states:

> Wanda K. Autry, Debtor, hereby reaffirms the indebtedness due First Citizens National Bank, Creditor herein, and agrees to comply with all the terms set forth in the instruments on which the indebtedness and security interest are based, and further agrees to pay Creditor the sum of $1,800.82 the payoff balance due plus accruing interest at the rate set forth in the instruments . . .

The only reference to the underlying debt is made by using the words "indebtedness" and "instruments." No reference is made to account numbers or the type of note(s) the debtor is reaffirming. Additionally, the agreement does not specify what piece of collateral, if any, the reaffirmation agreement covers. It simply states that the debtor is reaffirming the indebtedness and agreeing to pay First Citizens the sum $1,800.82.

Because First Citizens prepared the reaffirmation agreement at issue in this case, Tennessee law dictates that the Court must construe it against the Bank. In light of this mandate, the Court finds that the reaffirmation agreement covered both the $3,364.56 note and the Mastercard account. The reaffirmation agreement references "indebtedness" and "instruments." Given the fact that Autry had two outstanding accounts with First Citizens at the time of entering into the reaffirmation agreement, the Court presumes that the terms "indebtedness" and "instruments" referred to both accounts. Had the Bank intended to only include one of the accounts in the reaffirmation agreement, it could have specified which account by using an account number or a more detailed description than "indebtedness."

The debtor's attorney signed a declaration at the end of the reaffirmation agreement indicating he had represented Autry during the negotiation and execution of the agreement. According to this declaration, Autry's attorney advised her of the legal effect and consequences of signing the agreement. Given this advice, the Court cannot imagine any reason why an unemployed debtor would agree to reaffirm $1,800.82 for a piece of collateral with the intention of having to pay an additional $1,478.52

before the bank would release its lien on the car. Had the Bank intended for the debtor to make such an arrangement, it should have specified so in the reaffirmation agreement. Clearly the debtor thought that the reaffirmation agreement encompassed both the secured loan and the Mastercard account and that once the $1,800.82 was paid the car would be hers free and clear.

ORDER

It is therefore **ORDERED** that the Debtor's Motion for Contempt and to Enforce Discharge is **GRANTED as follows:**

First Citizens National Bank is ORDERED to (1) release the lien on the 1991 Pontiac Grand Am and (2) turn the title to the 1991 Pontiac Grand Am over to the Debtor.

It is **FURTHER ORDERED** that First Citizens National Bank's Objection to the Debtor's motion is **OVERRULED.**

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