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Subject:06-12303-s7 Doc#: 20 Elaine G Farmer and Dennis M Farmer -- Order on Reaffirmation Agreement

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U.S. BANKRUPTCY COURT

New Mexico

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Case Name: Elaine G Farmer and Dennis M Farmer

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Docket Text:

Order Denying Approval of [13] Reaffirmation Agreement filed by Creditor HSBC Auto Finance. (mba)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: J:\Acc\ord den reaff.pdf

Electronic document Stamp:

[STAMP bkecfStamp\_ID=1021991579 [Date=3/19/2007] [FileNumber=969889-0] [41f2509e458d0b4f4674af2c93f1e24d2cdaeb3aca10fd473e16eb598f8f1953d0527363122970ae63266e2b309b91e6745df7e1f7e40b7e10ba83ec17dc431]]

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Notice will not be electronically mailed to:

HSBC Auto Finance

PO Box 829009

Dallas, TX 75382

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In re:  
ELAINE FARMER and  
DENNIS FARMER,  
Debtors.

No. 7-06-12303 SL

**ORDER DENYING APPROVAL OF REAFFIRMATION AGREEMENT  
WITH HSBC AUTO FINANCE**

The proposed reaffirmation agreement ("Agreement") between the Debtors and HSBC Auto Finance (doc 13) came before the Court for a hearing on March 19, 2007. Debtor's counsel did not appear (the Court called her office but no one answered). Nor did the creditor ("HSBC") appear, despite the Court having provided notice of the hearing to HSBC as required by § 524(m)(1) (docs 18 and 19). For the reasons cited herein, the Court denies approval of the Agreement.<sup>1</sup>

The Debtors seek to reaffirm a debt of \$39,467 (up from the purchase price of \$39,368) at an interest rate of 13.69% (\$809.27 monthly payment) for a 2006 Dodge Ram 1500 S truck.

A box on the front of the agreement is checked to say "Presumption of Undue Hardship". The Court is unable to tell who checked off the box.

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<sup>1</sup> The Court has subject matter and personal jurisdiction pursuant to 28 U.S.C. §§1334 and 157(b); this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I) and (J); and these are findings of fact and conclusions of law as required by Rule 7052 F.R.B.P. The underlying chapter 7 case was filed after the effective date of the relevant provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-08, 119 Stat. 23, and therefore the changes enacted by that legislation are applicable to this proceeding.

Debtor's attorney executed Part C of the agreement, adopting the language which says

I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the Debtors; (2) this agreement does not impose an undue hardship on the Debtors or any dependent of the Debtors; and (3) I have fully advised the Debtors of the legal effect and consequences of this agreement and any default under this agreement.

A second paragraph, which is preceded by a check-off box, recites in relevant part as follows:

A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the Debtors are able to make the required payments.

By not checking the box that is part of the second paragraph and by signing Part C, Debtor's counsel has certified the statements in the first paragraph.<sup>2</sup>

Part D recites that the Debtors' monthly income is \$2,726.52, their monthly expenses \$2,897.00, and the net deficit \$170.48, the same figures that are in Schedules I and J. These figures result in a presumption of undue hardship. § 524(m). The Debtors have written into Part D that they expect someone else to make the payments, by way of refuting the presumption,

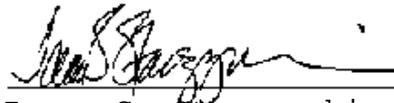
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<sup>2</sup> There is no paragraph which says that a presumption of undue hardship has arisen and the debtors cannot make the payments (presumably because in those circumstances the attorney should not be submitting the reaffirmation agreement to the Court for approval).

although that person is not identified.<sup>3</sup> Nor is there any other information to assure the Court that the Debtors are unlikely to default on the payments and thus to find themselves potentially the targets of wage garnishments, a seizure of their remaining checking or savings accounts, or other collection actions. While this lack of information does not by itself preclude approval of the reaffirmation agreement, the fact that Debtors' counsel certified that no presumption arose raises enough doubt in the Court's mind about whether the Debtors can make the payments without undue hardship.<sup>4</sup>

The Court finds that, having reviewed the Agreement, it should not approve it.

IT IS THEREFORE ORDERED that the proposed reaffirmation agreement ("Agreement") between the Debtors and HSBC Auto Finance (doc 13) is not approved.



James S. Starzynski  
United States Bankruptcy Judge

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<sup>3</sup> The purchase agreement attached to the reaffirmation agreement says the purchasers are Dennis Farmer (one of the Debtors) and Jacob Romero. Perhaps he is the one who will be making the payments.

<sup>4</sup> Nothing in this decision precludes Debtors and HSBC from entirely voluntarily agreeing to allow Debtors to continue using the vehicle as long as someone is making the payments and the vehicle is insured. See § 524(f). Should the payments cease and HSBC repossess the vehicle, HSBC could not of course pursue a deficiency judgment against the Debtors.

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