

<p>In re</p> <p>RANDY S. HAMILTON and CAROLEE E. HAMILTON,</p> <p style="text-align: center;">Debtor(s)</p>	<p>Case No. A08-00823-HAR</p> <p>In Chapter 7</p> <p>ORDER DISAPPROVING REAFFIRMATION AGREEMENT [USAA FEDERAL SAVINGS BANK]</p>
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A hearing for approval of a reaffirmation agreement with USAA Federal Savings Bank. (DN 25) was held on June 8, 2009. For the reasons stated on the record, the reaffirmation creates an undue hardship per 11 U.S.C. § § 524(m). In this instance, the collateral at issue is real property. There is some debate whether the doctrine of “backdoor ride-through” survived BAPCPA with respect to personal property.”¹ Courts are agreed, however, that BAPCPA’s changes, including termination of the automatic stay and ipso facto post-petition defaults, do not apply where real property secures a debt, and debtors may still retain, or ride through, real property without reaffirmation or redemption so long as payments to the creditor are current.² Therefore,

¹ The BAP held in *In re Dumont*, 383 BR 481 (9th Cir BAP 2008) that the ride-through doctrine with respect to personal property did not survive the enactment of BAPCPA in 2005, but in that case no reaffirmation agreement had been filed. *Dumont* favorably cited *In re Moustafi*, 371 BR 434 (Bankr D AZ 2007) in which a reaffirmation agreement involving personal property had been filed, but the court disapproved it as not being in the debtor’s interest. In *Moustafi*, the court allowed “backdoor ride-through” per §524(m), though it did not cite that section specifically (i.e., the creditor could not declare a default post-discharge so long as the payments were current and debtor had sought reaffirmation, but the court denied approval). The “backdoor ride-through” concept is explained in *Will the Ride-Through Ride Again*, 108 Columbia LR 882 (2008). A secured creditor in this situation would be wise to seek relief from stay or affirmative approval to repossess in order to avoid running afoul of the automatic stay under 11 USC § 362(a) or the discharge injunction under 11 USC § 524(a), should these statutes protect the debtor in a “backdoor ride-through” scenario. Most courts that have discussed the issue have found “backdoor ride-through” is available. *Coastal Federal Credit Union v Hardiman*, 398 BR 161, 181-88 (EDNC 2008); *In re Schmidt*, 397 BR 481, 485-86 (Bankr D MD 2008) [dicta]; *In re Chim*, 381 BR 191, 198-99 (Bankr D MD 2008); *In re Hudain*, 364 BR 211, 218-19 (Bankr ED VA 2007); and, *In re Blakeley*, 363 BR 225, 231 (Bankr D VT 2007).

² *In re Hart*, 402 B.R. 78, 82 (Bankr. D. Del. 2009), *In re Caraballo*, 386 B.R. 398, 401-02 (Bankr. D. Conn. 2008), *In re Wilson*, 372 B.R. 816, 820 (Bankr. D.S.C. 2007), *In re Bennett*, 2006 WL 150842 (Bankr. M.D.N.C. 2006).

IT IS ORDERED that the court disapproves the reaffirmation agreement per 11 U.S.C. § 524(m). Debtor and the creditor are given 20 days from the date of this order within which to file a request for reconsideration of this order.

DATED: June 9, 2009

HERB ROSS
U.S. Bankruptcy Judge