UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

IN RE: LENA M. ADAMS, Case No. 06-20190

Debtor. Chapter 7

ORDER DENYING APPROVAL OF REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND FIRST PREMIER BANK

The debtor filed her Chapter 7 petition on January 20, 2006, which means that the law governing her case is the newly-enacted Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Three months later, on March 15, 2006, a document entitled "Reaffirmation Agreement" was filed with the clerk's office. This agreement purported to reaffirm a credit card debt between the debtor and First PREMIER Bank.

The "Reaffirmation Agreement" had typewritten entries in various blank fields. For example, the debtor's name had been typewritten into the caption, but the blank for the creditor's name had not been filled in (although the caption indicated that this was a "Reaffirmation Agreement with First Premier Bank"). The blank next to "amount of debt you have agreed to reaffirm" had been completed with the typewritten notation, "TBD." The blank next to "[a]ll fees and costs accrued as of the date of this disclosure statement, related to the amount of debt shown . . ." had been completed with the typewritten notation, "0." The blank next to "total amount you have agreed to reaffirm (Debt and fees and costs)" had been completed

with the typewritten notation, "TBD." There were other typewritten notations on the form.

The form also bore handwritten notations. For example, in the space for "annual percentage rate," someone had hand-written "18.9." The credit card number had been hand-written in, as well as the date. The debtor's signature appeared in the box marked "debtor"–this portion of the agreement was notarized. In the space marked "accepted by creditor," there was no date or signature–the entire section for the creditor was blank.

Part C of the form required a certification by the debtor's attorney, "if any." The debtor signed this certification herself, and handwritten in were the debtor's address and telephone number, as well as the date. This portion of the reaffirmation agreement was notarized.

Finally, in Part D–the debtor's statement in support of the reaffirmation agreement–handwritten notations had been made regarding how much income the debtor received, how much she could pay, and how much she'd have left over. There also was a handwritten note regarding an increase in her income, and again the debtor's signature and the date appeared, handwritten, in the appropriate spaces.

The Court set the matter for a hearing because, according to the docket, the debtor was not represented by counsel. The Court also was concerned that the reaffirmation agreement had not been signed by the creditor, and that it did not list the amount of the debt to be reaffirmed.

On April 11, 2006, the debtor appeared for her hearing. She told the Court that First PREMIER Bank had sent her the reaffirmation agreement, and that the typed portions were completed by the creditor. She indicated that she believed that the reason the agreement didn't reflect an amount on the debt to be reaffirmed was because she didn't owe the bank any money–in fact, she indicated that she had a credit in excess of $70 with the bank. When the Court inquired why she wanted to reaffirm a debt she didn't owe, the debtor responded that First PREMIER Bank had told her that she couldn't use her credit card unless she signed, had notarized, and filed the reaffirmation agreement. She told the Court that she'd received two letters from First PREMIER Bank telling her exactly what to do.

At this point, the Court became even more concerned over the possibility that a bank[1] had inappropriately used the reaffirmation process to exact some sort of super-cardholder's agreement out of a *pro se* debtor. Accordingly, the Court asked the debtor if she had retained the letters from the bank. She said she had, and that she'd bring them in to the Court that very afternoon.

Later in the day on April 11, the debtor brought in two letters from First PREMIER Bank. The first letter, dated February 22, 2006, read as follows:

> Enclosed is your Reaffirmation Agreement with First PREMIER Bank. It has been completed in a form acceptable to the bank. If it is acceptable to you, please sign the document.

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[1] The Court does not refer to First PREMIER Bank as "creditor." The debtors does not owe the bank any money, and indeed, is not listed as a creditor on the debtor's schedules.

> Also enclosed is the Debtor's Attorney's Statement regarding the Reaffirmation Agreement. Please have your attorney sign and notarize this document. Also, have your attorney file the Reaffirmation Agreement and the Debtor's Attorney's Statement with the Clerk of Courts of Wisconsin and return the filed stamped copies to us. If you are acting as your own attorney in your bankruptcy case, sign as an attorney and as a cardholder in the denoted areas. Unless this process is followed the Reaffirmation Agreement will not be filed. When these steps are completed and we receive the file-stamped documents, the Reaffirmation Agreement will be effective according to its terms.

After giving the appropriate contact information, the author signs the letter, "M. Wilson, Customer Service Department."

The second letter, dated March 27, 2006–some two weeks before the reaffirmation hearing–reads as follows:

> We recently received your completed Reaffirmation Agreement on account number [_____]. The Reaffirmation Agreement has been accepted. Your account is currently closed with a balance due of $0.00. If you would like to reopen your account, or you have any other questions and/or concerns, please call our Customer Service Department at 1-800-987-5521.

The letter gives the hours the customer service department is open, and again is signed by "M. Wilson" of the "Customer Service Department."

There are a number of things that are very problematic about what First PREMIER Bank did in this matter. The first and most obvious is the fact that the bank appears to have required a debtor to reaffirm a non-existent debt. Section 524 of Title 11 governs reaffirmations. Specifically, § 524(c) indicates that "[a]n agreement between a holder of a claim and a debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title,"

is enforceable under certain conditions. Thus, a reaffirmation agreement is an agreement between a *holder of a claim* and a debtor–it is an agreement whereby the debtor agrees that, even though the debt is dischargeable under the bankruptcy laws, the debtor will not seek discharge of the debt, but will continue to pay it. A claim, by its very definition, is a right to be paid a debt owed. *See* 11 U.S.C. § 101(5). If a debtor does not owe a debt to a bank, then that bank does not hold a claim, and thus cannot enter into a reaffirmation agreement.

While it is not entirely clear from the letters First PREMIER Bank sent to the debtor, it appears that the bank told the debtor that it was closing her credit card account, and that she could not get the account re-opened unless she signed the reaffirmation agreement the bank sent her. For all intents and purposes, however, that reaffirmation agreement–which purported to reaffirm a debt that is not owed, on a claim that does not exist, to a bank that is not a creditor of this debtor–was unenforceable gibberish. The debtor, not having a lawyer and not understanding bankruptcy law, did not know this, and because she was trying to do what the bank asked her to do, she went through this spurious exercise.

The bankruptcy laws are, of course, there to protect both debtors and creditors. But for a bank–or any other entity or person– to improperly use the laws to lead debtors to believe that they must do things *not* required by the bankruptcy laws constitutes, in this Court's view, an abuse of those laws. First PREMIER Bank's demand that this debtor execute an invalid reaffirmation agreement in order

to re-activate her credit card is such an abuse of the system.

There are, of course, other problems with what the bank told this debtor to do, and the information–or, more appropriately, mis-information–that the bank gave the debtor. The bank instructed the debtor that, if she was not represented by an attorney, *she* should sign the box marked "debtor's attorney." This is inappropriate. The form clearly contemplates that some debtors may not have counsel, because it says, "debtor's attorney (if any)." It does not say, "debtor's attorney, or debtor if debtor is unrepresented." The form clearly expects that portion to be completed only if there is an attorney involved in the matter–a person who has been to law school and holds a license to practice law. If there is no attorney, then that portion of the form should be left blank. For the bank to instruct the debtor–who is not an attorney–to represent that she *is* an attorney was inappropriate.

The February 22 letter instructs the debtor to file the documents with "the Clerk of Courts of Wisconsin." First, as most creditors know, the United States bankruptcy courts have exclusive jurisdiction over bankruptcy proceedings–Wisconsin courts do not hear bankruptcy matters. Thus, if the bank had any business instructing the debtor where to file the spurious reaffirmation agreement, it should have instructed her to file with the bankruptcy clerk of court. Second, telling a *pro se* debtor to file with the "Clerk of Courts of Wisconsin" is singularly unhelpful. There are, as most Wisconsin practitioners know, numerous

clerks of Wisconsin courts. There are circuit court clerks for each of the counties, there are clerks for the courts of appeals, a clerk for the Wisconsin Supreme Court. There are clerks for various Wisconsin municipalities. If a creditor is going to attempt to "help" a debtor, it should at least give that debtor information that actually is helpful.

The bank told the debtor in the February 22 letter that once she'd filed the reaffirmation agreement and returned a file-stamped copy to the bank, "the Reaffirmation Agreement will be effective according to its terms." This is, quite simply, not true. In cases where a debtor is not represented by an attorney, § 524(c)(6)(A) mandates that the reaffirmation agreement shall not be enforceable unless the *court* approves the agreement as not imposing an undue hardship on the debtor and as being in the debtor's best interest. For a *pro se* debtor, a reaffirmation agreement is not effective until approved by the court (unless the debt is a consumer debt secured by real property). For the bank to tell this debtor that the agreement was effective upon filing was inaccurate and inappropriate.

Similarly, when the bank told the debtor in the March 27 letter–a letter written two weeks *before* the reaffirmation hearing before this Court–that "[t]he Reaffirmation Agreement has been accepted" was, at best, misleading. A debtor who is not knowledgeable about bankruptcy law–which many *pro se* debtors are not–could easily read that statement to believe that the agreement had become effective and binding. As discussed above, this is not true. The agreement would

not become effective or binding unless and until approved by the Court.

This Court does not approve this reaffirmation agreement. First PREMIER Bank should not have sent it to the debtor or required her to execute it. Nor should it have made the various misrepresentations to the debtor that it made in the two letters it sent her. A copy of this decision will be forwarded to the United States Trustee, who may have his own concerns about the conduct engaged in by First Premier Bank.

It is hereby ORDERED that the reaffirmation agreement between First Premier Bank and the debtor is not approved.

SO ORDERED this 12th day of April, 2006.

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HON. PAMELA PEPPER
United States Bankruptcy Court

Cc: Lena Adams
Debtor

First Premier Bank

Helen M. Ludwig
Chapter 7 Panel Trustee

Office of the U.S. Trustee