

So Ordered.

Dated: July 7th, 2015



Frederick P. Corbit

Frederick P. Corbit
Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

ANDREW JAMES MARSHALL and
MEAGHAN PATRICIA MARSHALL,

Debtors.

Case No. 15-01304-FPC7

ORDER DISAPPROVING
REAFFIRMATION AGREEMENT

The debtors, Andrew James Marshall and Meaghan Patricia Marshall, filed on June 11, 2015 a motion for approval of the Reaffirmation Agreement that was made between them and Wells Fargo Dealer Services (“Wells Fargo”). On July 7, 2015, after appropriate notice to the debtors and Wells Fargo, the court held the hearing as required by 11 U.S.C. § 524(d). Based on the record in this case and the testimony of the debtor Andrew James Marshall, the court finds that (1) the proposed Reaffirmation Agreement is not in the debtors’ best interest and if approved would impose an undue hardship on the debtors; and (2) the debtors have complied with the requirements of 11 U.S.C. §§ 362(h) and 521(a) by timely indicating their intent to reaffirm the debt and by entering into the Reaffirmation Agreement. Therefore,

1 IT IS ORDERED:

2 1. The debtors' motion to approve the Reaffirmation Agreement (ECF No.
3 8) is **DENIED**.

4 2. Because the debtors have complied with the requirements of 11 U.S.C.
5 §§ 362(h) and 521(a)(2), 11 U.S.C. § 521(d), which makes "ipso facto default"
6 clauses enforceable, does not apply in this case. Accordingly, Wells Fargo cannot
7 use the absence of a reaffirmation agreement or the debtors' bankruptcy as a basis to
8 repossess the 2005 Volvo XC90 (the "Collateral").

9 3. Because the debtors have complied with the requirements of sections
10 521(a)(2) and 362(h), the debtors may retain the Collateral so long as they continue
11 to make timely voluntary payments, and satisfy their other obligations, as provided
12 for in Wells Fargo's loan documents.

13 4. In the event the debtors retain the Collateral pursuant to paragraph 3
14 above, and timely make payments on the obligation secured by the Collateral, Wells
15 Fargo may continue sending bills, payment coupons, and statements to the debtors as
16 it has in the past, and to continue accepting payments until either: (1) Wells Fargo is
17 notified by the debtors to cease sending such bills, payment coupons, and statements
18 or taking funds from the debtors' bank accounts; (2) any creditor secured by the
19 Collateral repossesses it and disposes of it pursuant to applicable non-bankruptcy
20 law; or (3) the secured obligation is paid in full.

1 5. Acceptance of voluntary payments from the debtors, pursuant to the
2 terms of this order, is not a violation of 11 U.S.C. § 524(a)(2).

3 6. In the event that the debtors retain the Collateral pursuant to paragraph
4 3 above, and thereafter default in their obligations as set forth in the loan documents,
5 Wells Fargo may collect its debt by enforcing its rights against the Collateral
6 pursuant to applicable non-bankruptcy law. Such collection may include written,
7 electronic, and/or telephonic communication to the debtors to notify the debtors of
8 any default and Wells Fargo's intention to repossess or foreclose on the Collateral
9 unless the default is cured.

10 7. Because the reaffirmation is denied, and unless this case is dismissed
11 without the debtors obtaining a discharge, Wells Fargo may not take or threaten to
12 take any action to collect its debt as a personal liability of the debtors. However,
13 compliance with the terms of this order will not be construed as an attempt to collect
14 or recover any pre-bankruptcy debt as a personal liability of the debtors.

15 ///**END OF ORDER**///
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