The relief described hereinbelow is SO ORDERED.

SIGNED this 21st day of July, 2021.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

BEVERLY HERBERT-LONG and
ISHAM DALE LONG,

Debtors.

Case No. 19-22157
Chapter 7

ORDER DENYING MOTION TO "SET ASIDE ORDER CONFIRMING REAFFIRMATION"

Debtors filed for Chapter 7 bankruptcy in 2019. On January 8, 2020, debtor Beverly Herbert-Long signed an agreement reaffirming a debt to creditor CommunityAmerica Credit Union for $13,738.94; the debt was secured by a 2015 Tracker boat valued at $6,000. Debtors filed the reaffirmation agreement on January 10, 2020 and received a discharge on February 3, 2020.

On June 16, 2020, alleging that they had both lost their part-time employment due to the COVID-19 pandemic and that they were no longer able to make payments on the boat, Debtors filed the present motion "for an Order setting aside this Court's approval of the Reaffirmation Agreement."[1] Debtors' motion asks that the reaffirmed debt be "discharged."

The Court cannot grant Debtors the specific relief they seek; as CommunityAmerica notes in its brief, the Court did not "approve" the reaffirmation, and there is nothing to set aside. Nor is the reaffirmed debt dischargeable in the present case; a Chapter 7 discharge applies only (with limited exceptions not relevant here) to debts that arose before the filing of the bankruptcy petition, whereas the reaffirmation agreement created a new post-petition debt. *See* 11 U.S.C. § 301(b) ("The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter."), 11 U.S.C. § 727(b) ("[A] discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter . . . ."); *Schott v. WyHy Fed. Credit Union (In re Schott)*, 282 B.R. 1 (B.A.P. 10th Cir. 2002) ("In substance a reaffirmation agreement is a new contract that renegotiates or reaffirms the original debt.").

Debtors cite this court's decision in *Enos v. Endura Fin. Fed. Credit Union (In re Enos)*, 2012 WL 4026107 (Bankr. D. Kan. Sept. 11, 2012), in support of their motion. However, unlike the plaintiffs in *Enos*, Debtors do not argue that the

[1] ECF 38.

reaffirmation agreement was void at its inception. *Cf. Enos*, 2012 WL 4026107, at *4 (invalidating reaffirmation agreement on grounds of mutual mistake and lack of consideration). Rather, citing *Sunflower Electric Cooperative, Inc. v. Tomlinson Oil Co.*, 638 P.2d 963 (Kan. Ct. App. 1981), they argue that the doctrine of impracticability of performance relieves them of liability for its breach. That argument, without more, is beyond the jurisdiction of this bankruptcy court. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995) ("The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute."); *Schott*, 282 B.R. at 7 ("Conventional contract principles apply to reaffirmation agreements."). Under the facts of this case, Debtors must seek redress in the Kansas state courts under Kansas law.

For the foregoing reasons, Debtors' motion is denied.

IT IS SO ORDERED.

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