



**SO ORDERED.**

**SIGNED this 26 day of September, 2007.**

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.  
PLEASE SEE DOCKET FOR ENTRY DATE.**

A handwritten signature in black ink, appearing to read "Richard Stair Jr.", written over a horizontal line.

**Richard Stair Jr.  
UNITED STATES BANKRUPTCY JUDGE**

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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 07-32678

JAMES B. BATES  
VIRGINIA S. BATES

Debtors

**MEMORANDUM AND ORDER ON MOTION  
TO APPROVE AGREED ORDER AUTHORIZING DEBTORS  
TO ASSUME LEASE AGREEMENTS**

Before the court are two Motions to Enter Agreed Order Approving Assumption of Lease Agreement Between Debtors and Cab East LLC (collectively, Motions) filed on September 25, 2007, asking the court to enter Agreed Orders approving, pursuant to 11 U.S.C. § 365(p) (2005), the assumption by the Debtors of a Lease Agreement dated April 5, 2007, for the lease of a 2007 Ford Fusion and a Lease Agreement dated April 4, 2007, for the lease of a 2007 Mercury Milan, respectively. The proposed Agreed Order Approving Assumption of Lease Agreement Between Debtors and Cab East LLC submitted to the court with each Motion purports to approve the Debtors' assumption of each Lease Agreement "as a personal liability of the Debtors" and provides that "the

Debtors waive the affect [sic], if any, the discharge under 11 U.S.C. § 524(a) has as to the assumed Lease Agreement.”

After reviewing the Motions, and upon consideration of the requested relief, the court finds that the Motions are not required by or appropriate under § 365(p). Section 365(p) provides, in material part, as follows:

(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate, and the stay under section 362(a) is automatically terminated.

(2)(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this section.

11 U.S.C. § 365(p). The procedure for assuming a lease under this statute requires written notice by the debtor of the desire to assume and acceptance by the creditor of the assumption, and judicial involvement is not required or warranted. 11 U.S.C. § 365(p)(2); *see also In re Robinson*, 2007 Bankr. LEXIS 3020, at \*3 (Bankr. S.D. Ohio Aug. 13, 2007); *In re Walker*, 2007 Bankr. LEXIS 1547, at \*1-2, 2007 WL 1297112, at \*1 (Bankr. M.D.N.C. Apr. 27, 2007); *In re Rogers*, 359 B.R. 591, 593 (Bankr. D.S.C. 2007). Furthermore, even if the court were to entertain such motions, the Motions before the court do not establish compliance with the statutory requirements of § 365(p).

Finally, notwithstanding the requirements of § 365(p), an agreement thereunder is insufficient to waive the Debtors' personal liability for the debt post-discharge. The language of 11 U.S.C. § 524(c) (2005) is all encompassing, and a pre-petition debt that would otherwise be discharged in chapter 7 will be enforceable after discharge "only if" the debtor and creditor enter into an agreement made in compliance with § 524(c). Section 524(c) contains no exception for a lease assumption under § 365(p). Accordingly, absent reaffirmation of the debt under § 524(c), the underlying debt, while assumed, is not excepted from discharge. *See also Robinson*, 2007 Bankr. LEXIS 3020, at \*5 (Bankr. S.D. Ohio Aug. 13, 2007); *Walker*, 2007 Bankr. LEXIS 1547, at \*2, 2007 WL 1297112, at \*1 (Bankr. M.D.N.C. Apr. 27, 2007); *In re Creighton*, 2007 Bankr. LEXIS 579, at \*15, 2007 WL 541622, at \*5 (Bankr. D. Mass. Feb. 16, 2007).

For the foregoing reasons, the court directs the following:

1. The Motion to Enter Agreed Order Approving Assumption of Lease Agreement Between Debtors and Cab East LLC filed on September 25, 2007, concerning the April 5, 2007 Lease Agreement of a 2007 Ford Fusion is DENIED.

2. The Motion to Enter Agreed Order Approving Assumption of Lease Agreement Between Debtors and Cab East LLC filed on September 25, 2007, concerning the April 4, 2007 Lease Agreement of a 2007 Mercury Milan is DENIED.

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