Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of: **Adam Mason,** Petitioner.	HUDOA No. 10-H-NY-AWG114 Claim No. 780678766
James A. Mick, P.C. 309 East Laurel Street Scottsboro, AL 35768	For Petitioner
Julia M. Murray, Esq. U.S. Department of Housing and Urban Development Office of Regional Counsel for New York / New Jersey 26 Federal Plaza, Room 3237 New York, New York 10278	For the Secretary

DECISION AND ORDER

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996, as amended, 31 U.S.C. § 3720D, authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b).

The administrative judges of this Court have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f) (8) (i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f) (8) (ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. (*Id.*)

Pursuant to 31 C.F.R. §285.11(f)(4), on August 13, 2010, this Court stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage

withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral, dated August 13, 2010.)

Background

On March 15, 2004, Petitioner and a co-signor executed and delivered a Retail Installment Contract-Security Agreement ("Note") to Mikes Place Inc. in the amount of $27,395, which was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y. Stat."), filed September 7, 2010, ¶ 2, Ex. A.) Contemporaneously, on March 15, 2004, the Note was assigned by Mikes Place Inc. to 21st Mortgage Corporation. (Sec'y. Stat., ¶ 3, Ex. A.)

Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on March 17, 2006, 21st Mortgage Corporation assigned the Note to the United States of America. (Sec'y. Stat., ¶ 4, Ex. B; Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, HUD Financial Operations Center ("Porter Decl."), dated August 27, 2010, ¶ 3.) The Secretary is the holder of the Note on behalf of the United States of America. (Sec'y. Stat., ¶ 4, Ex. B; Porter Decl, ¶ 3.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec'y. Stat., ¶ 5; Porter Decl., ¶ 4.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD. The Secretary alleges that Petitioner is in default on the Note and is indebted to HUD in the following amounts:

(a) $7,108.99 as the unpaid principal balance as of July 31, 2010;
(b) $1,118.04 as the unpaid interest on the principal balance at 2% per annum through July 31, 2010; and
(c) interest on said principal balance from August 1, 2010 at 2% per annum until paid.

(Sec'y. Stat., ¶ 5; Porter Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated July 23, 2010, was sent to Petitioner. (Sec'y. Stat., ¶ 6; Porter Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (Sec'y. Stat., ¶ 7; Porter Decl., ¶ 6.) As of August 27, 2010, Petitioner has not entered into a written repayment agreement with HUD. (Sec'y. Stat., ¶ 7; Porter Decl., ¶ 6.)

Based on a review of Petitioner's weekly pay statement, the Secretary, after accounting for allowable deductions, proposes a weekly repayment schedule of 15% of Petitioner's disposable pay or $121.15. (Sec'y Stat. ¶ 8; Porter Decl., ¶ 7.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner must show, by a preponderance of the

evidence, that the debt is unenforceable or does not exist. Petitioner, through counsel, claims that he does not owe the alleged debt because he entered into the Note as a minor, at the age of 18 years old; and, that he later disaffirmed the contract after reaching the age of majority. As a result, in order for Petitioner to establish his case he must: 1) prove that he was a minor when he signed and executed the Note; and 2) prove that he later disaffirmed the Note as a contract when he became of age.

First, Petitioner, through counsel, states that, "[O]n March 15, 2004, I, Adam Mason, was eighteen (18) years old at the time the Retail Installment Contract-Security Agreement ("Note") for $27,395 was signed." (Petitioner's Response to Secretary's Allegations, (Pet'r's Response"), filed October 20, 2010, Attached Affidavit, ¶ 3.) Petitioner further states that he "did not have the legal capacity to sign the contract." (Pet'r's Response, ¶ 1.) According to Alabama Code § 26-1-1, the age of majority is nineteen years old. Petitioner produced, as evidence of his date of birth, copies of his driver's license and birth certificate that together verified his date of birth as June 11, 1985. The date the Note was signed and executed by Petitioner was March 15, 2004.

The Secretary acknowledges Petitioner's allegation that he was 19 years old at the time he executed the Note, but thereafter argues that "the law in Alabama does not provide a blanket waiver of responsibility for the repayment of contracts entered into by minors." Therefore, based upon the evidence provided by Petitioner, and without evidence from the Secretary to refute or rebut that produced by Petitioner, I find that Petitioner had not yet reached the age of majority when he executed the Note on March 15, 2004.

Second, Petitioner claims that he does not owe the debt because he "timely renounced and disaffirmed any responsibility on the account in accordance to the well recognized general rule as to contracts of infants." (Brief in Support of Petitioner's Position ("Pet'r's Brief"), at 2, filed February 10, 2011.) Petitioner further claims that, "a minor is not liable on any contract he makes and that he may disaffirm on the same." (Pet'r's Brief, at 1.)

The Secretary argues, however, that "a minor's disaffirmation of a contract does not necessarily relieve him from the obligation to return that which he received as a benefit under the contract." (Supplemental Secretary's Statement, (Supp. Sec'y. Stat.), filed April 4, 2011, ¶ 13). Citing *Smoot v. Ryan*, 187 Ala. 396, 65 So. 828, 830, the Secretary notes that:

> [A] minor's disaffirmation of a contract 'render[s] it void ab initio, not merely prospectively. The effect of the infant's avoidance of a contract is not a partial destruction of the contract; it is a total one...After the infant avoids the contract, the parties are left to their rights and remedies, just as if there had never been any contract at all....[T]here are certain instances where the infant is required to restore the consideration received by him...."

(Supp. Sec'y. Stat., ¶ 14.)

The Secretary argues further that, "in this case, Petitioner alleges that he disaffirmed the contract, but Petitioner does not allege that he contemporaneously relinquished the benefits he received as a consequence of his execution of the Note." (Id., ¶ 15.) The Secretary finally argues that:

> 16. Petitioner has provided no evidence that he immediately transferred his right, title, and interest in the mobile home to the lender upon disaffirming the contract. Moreover, there is no evidence in HUD's file that Petitioner disaffirmed the Note at all, whether before or at the time he reached the age of majority. (Declaration of Brian Dillon dated March 31, 2011 at ¶ 3). ...
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> 17. The act of disaffirming a contract comes with responsibilities and obligations, and Petitioner has provided no evidence to show that he met those obligations.

(Id., ¶¶16-17.)

In Alabama, when a minor enters a contract, "[i]t is the privilege of the minor only to disaffirm the sale or contract, and, until he does so, the other party is bound by it. The minor, when he becomes of age, may regard the contract as beneficial, and choose to affirm it; if, however, he elects to disaffirm it, he annuls it on both sides, ab initio, and the parties revert to the same situation as if the contract had not been made." *Wallace v. Francis*, 103 So. 2d 831, 832 (Ala. Ct. App. 1958) (quoting *Smoot v. Ryan*, 65 So. 828, 830 (Ala. 1914)). The minor may only disaffirm the contract after coming of age *if he does so within a reasonable time after reaching the age of majority*. (emphasis added) *Smoot*, 65 So. 830. Any act showing the minor's intent to disaffirm the contract is sufficient to effectuate the disaffirmance. *Id.* at 831.

In this case, Petitioner renounced ownership of the mobile home once he learned of the repossession of the home, but, Petitioner's disaffirmance of his contractual obligation occurred after a lapse of 16 months between the time Petitioner turned 19 years old, the age of majority, and the time he disaffirmed the Note. For this Court to be fully persuaded that Petitioner's disaffirmance occurred within a reasonable time after he reached the age of majority, Petitioner must provide sufficient evidence that justifies the delay and confirms that Petitioner did nothing such as, for example, making even a single monthly payment on the Note to ratify the Note during that time frame. (*See Am. Mortgage Co. of Scot v. Wright*, 14 So. 399, 401(Ala. 1894)) (court held a minor who ratifies a contract after reaching the age of majority need not have knowledge that the contract was voidable for the ratification to render the contract binding.) Here, the record does not support a finding that Petitioner provided sufficient documentation that explained the reason for his delay of 16 months after reaching the age of majority in order to disaffirm the Note.

The Court ordered Petitioner to produce such necessary documentation in order to fully address this concern by ordering Petitioner to "file sufficient documentary evidence that substantiates the date and manner of Petitioner's renouncement and disaffirmance of the debt." (Order, issued March 18, 2011.) In response, Petitioner provided a copy of a letter from 21st

Mortgage Corporation dated October 24, 2005 alerting the co-signor's counsel that the mobile home purchased with the Note had been repossessed. (Petitioner's Letter ("Pet'r Ltr."), filed April 7, 2011.) Petitioner also submitted a notarized letter in which he states: "When I learned the repossession to be true I immediately renounced ownership stating that I was a minor at the time of signing. After that I told my mother and she called and did the same since I was a minor and she was my legal guardian at the time." (Pet'r Ltr.)

Based upon an examination of the documentation provided by Petitioner, it is arguable that an inference may be drawn from the evidence provided that Petitioner may have disaffirmed the Note. However, the more prevailing issue is why did Petitioner delay his disaffirmance for 16 months after reaching the age of majority. There is no evidence the Petitioner had any intention of renouncing ownership of the property prior to becoming aware of the repossession. No documentary evidence was provided by Petitioner to explain the delay of 16 months before he disaffirmed the contract. Without any explanation or evidence from Petitioner regarding this issue, Petitioner has not fully persuaded the Court that he has met his burden of proof that he disaffirmed the Note within a reasonable time after reaching the age of majority. As such, consistent with *Wallace* and *Smoot*, I find that disaffirmance was not effectuated in this case, but, due to the lapse of time that spanned the course of over a year, Petitioner instead ratified the contract in this case.

In Alabama, after reaching the age of majority a contract is ratified by any action taken in pursuance of it. *Am. Mortgage Co. of Scot. v. Wright*, 14 So. 399, 401 (Ala. 1894). "[C]ontracts of infants are capable of confirmation by acts done in pursuance of them after the infant becomes of age, without any new consideration." *Williams v. Colquett*, 133 So. 2d 364, 368 (Ala. 1961). While Petitioner contends, in this case, that "he did not reside in the mobile home for any significant period of time after turning nineteen", he nonetheless produced evidence showing that he only renounced ownership when he "found out that the trailer had been repossessed." (*See* Pet'r Ltr.) Petitioner also provided, as evidence, a letter from his mother in which she stated that, "[The co-signor] married 2 mo. after Adam *vacated the premises*. [Petitioner and co-signor] were not at any time married [to each other]." (emphasis added) (Petitioner's Mother's Letter, filed April 7, 2011"). Petitioner's choice not to continue to reside in the mobile home does not preclude collection of the alleged debt but instead proves that, prior to vacating the premises, Petitioner received the necessary benefit of housing from the moment he signed the Note until the day he vacated the premises. (*See Ragan v. Williams*, 220 Ala. 590, 127 So. 190 (Ala. 1930) (held that a contract entered into by an infant for housing needed for himself and his family was a "necessity" for which he was liable.)

"Alabama law, like the law of most states, provides that persons providing 'necessaries' of life to minors may recover the reasonable value of such necessaries irrespective of the existence, or nonexistence, of a (voidable) contract respecting those necessaries. As stated by the Alabama Supreme court in *Ragan v. Williams*, 220 Ala. 590, 127 So. 190 (1930), 'when necessaries are furnished to one who by reason of infancy cannot bind himself by his contract, the law implies an obligation on the part of such person to pay for such "necessaries" out of his own property.' 220 Ala. at 590, 127 So. at 191." *Young v. Weaver*, 883 So. 2d 234, 236-37 (citing *Ragan v. Williams*, 220 Ala. 590, 127 So. 190.) "An infant's liability for necessaries is based not upon his or her actual contract to pay for them, but upon a contract implied by law, or

in other words, a quasi-contract." See 42 Am. Jur. 2d Infants § 64 (2000); *see also Ex parte McFerren*, 184 Ala. 223, 224, 63 So. at 159 (1913) (observing that "in all cases in which [an infant lessee] has been held liable for rent or in which he has been denied to recover rents paid, he has received some actual benefit from the use of the property as a tenant.").

In this case, prior to vacating the property, Petitioner was provided with the necessary accommodation of housing. His intent to renounce ownership of the property was only prompted by Petitioner becoming aware of the mortgage company's repossession of the mobile home, and, by Petitioner's own admission, he admitted "When I learned the repossession to be true, I immediately renounced ownership stating that I was a minor at the time of signing." (Petitioner's Affidavit, filed April 12, 2011.) Thereafter, in accordance with Alabama law, regardless of Petitioner's status as a minor, he remained in a quasi-contract with the co-signor, an agreement that is considered to be a contract implied by law. *See* 42 Am. Jur. 2d Infants § 64 (2000); *see also Ex parte McFerren*, 184 Ala. 223, 224, 63 So. at 159 (1913) (observing that "in all cases in which [an infant lessee] has been held liable for rent or in which he has been denied to recover rents paid, he has received some actual benefit from the use of the property as a tenant"); *Tracey M. Sandell*, HUDOA No. 10-H-NY-LL73, dated December 17, 2010 (citing *Cronebaugh v. Van Dyke*, App 5 Dist., 415 So. 2d 738, 741 (1982), *petition for review denied* 426 So. 2d 25 (1983) (A person 18 years of age or older has the right to receive, and to assume the management of his estate, to contract and to be contracted with, and to sue and to be sued).

Based upon the existence of the quasi-contract between Petitioner and the co-signor, Jennifer Martin, Petitioner, a minor, received as a necessity the actual benefit of housing. Petitioner may not renounce ownership of the property after the property has been repossessed, and then thereafter, disaffirm his contractual obligations under the terms of the Note. Since Petitioner did not effectively disaffirm the contract, Petitioner cannot now avoid responsibility for his contractual obligations after having received the benefit of the contract. Therefore, I find that because Petitioner benefitted from the "necessity" of housing as a result of entering into the contract, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is enforceable against Petitioner in the amount alleged by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at 15% of Petitioner's disposable pay.

Vanessa L. Hall
Administrative Judge

June 20, 2011