SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: December 18, 2015

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

LINDA J. WELCH, **CASE NO. 15-01075-NPO**

DEBTOR. **CHAPTER 7**

ORDER DENYING MOTION TO REOPEN CHAPTER 7 CASE

This matter came before the Court for hearing on December 7, 2015 (the "Hearing") on the Motion to Reopen Chapter 7 Case (the "Motion") (Dkt. 21) filed by Republic Finance, LLC ("Republic Finance") in the above-styled chapter 7 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Durwood E. McGuffee, Jr. ("McGuffee") represented Republic Finance and B. Ray Therrell, II ("Therrell") represented the debtor, Linda J. Welch (the "Debtor"). After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I), and (O).

Facts

1. The Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code on March 31, 2015. (Dkt. 1).

2. The Debtor received a discharge and the Bankruptcy Case was closed on August 4, 2015. (Dkt. 18).

3. Republic Finance filed the Motion on October 10, 2015. In the Motion, Republic Finance stated that it entered into a reaffirmation agreement (the "Reaffirmation Agreement") with the Debtor on July 29, 2015. The exhibit to the proof of claim (POC 1-1) indicated that Republic Finance loaned the Debtor $4,573.13 at an annual interest rate of 36.20%. (Mot. Ex. 1 at 3). In exchange, the Debtor granted Republic Finance a non-purchase money security interest in certain household goods with a purported total value of $4,350.00. (Mot. Ex. 1 at 6-7). According to the Motion, the Reaffirmation Agreement was e-mailed to Therrell on July 29, 2015, but Republic Finance did not receive the Reaffirmation Agreement signed by the Debtor until September 2015. (Mot. at 1). In the Motion, Republic Finance stated that the "error in not filing the reaffirmation agreement before the case was closed was an innocent error, and equity justifies reopening the case to allow the executed Reaffirmation Agreement to be filed in the case." (*Id.* at 2).

4. At the Hearing, McGuffee stated that the parties agreed to the terms of the Reaffirmation Agreement in July, but Therrell was in the process of starting a new job and the Reaffirmation Agreement was not signed by the Debtor until after the Bankruptcy Case was closed. McGuffee stated that although the Reaffirmation Agreement was not signed by the Debtor until after the Bankruptcy Case was closed, there was a "meeting of the minds" in July. He stated that the parties agreed to all of the terms of the Reaffirmation Agreement on July 29,

2015. Therrell agreed and stated that the Debtor does not oppose the Motion.

5. McGuffee and Therrell agreed at the Hearing that the Debtor did not sign the Reaffirmation Agreement until after the Debtor received a discharge. McGuffee stated that the Debtor signed the Reaffirmation Agreement on August 26, 2015, which was after she received a discharge and the Bankruptcy Case was closed. The Reaffirmation Agreement is not attached to the Motion or otherwise filed in the Bankruptcy Case.

Discussion

Because the parties agreed that the Debtor did not sign the Reaffirmation Agreement until after the Debtor received a discharge, the narrow issue before this Court is whether a reaffirmation agreement is enforceable when a *debtor* does not sign it until after he or she receives a discharge. Republic Finance sought to reopen the Bankruptcy Case approximately two (2) months after it was closed in order to file the Reaffirmation Agreement. A closed bankruptcy case may be reopened pursuant to § 350(b)[1] "to administer assets, to accord relief to the debtor, or for other cause." Section 350(b) grants the Court broad discretion to reopen a closed case when a debtor can show cause as to why the bankruptcy case should be reopened. *Citizens Bank & Trust Co. v. Case (In re Case)*, 937 F.2d 1014, 1018 (5th Cir. 1991); 3 COLLIER ON BANKRUPTCY § 350.03[1] (16th ed. 2015). Whether a court should grant a motion to reopen depends upon the circumstances of the individual case. *Id.* In deciding whether to reopen the Bankruptcy Case, the Court also should consider whether doing so would be futile. "If substantive relief [cannot] be granted in the reopened case, then there is no reason to grant a motion to reopen." *The First Nat'l Bank of*

[1] All code sections refer to the Bankruptcy Code found at title 11 of the U.S. Code, unless stated otherwise.

Jeffersonville v. Goetz (In re Goetz), Adv. No. 08-3341, 2009 WL 1148580, at *2 (Bankr. S.D. Tex. Apr. 24, 2009). Thus, "if reopening a case would be futile and a waste of judicial resources or would serve no purpose, then cause to reopen does not exist." *Id.* (citations omitted). Here, reopening the Bankruptcy Case would be futile unless the Reaffirmation Agreement is enforceable.

Republic Finance seeks to reopen the Bankruptcy Case "for the limited purpose of allowing [Republic Finance] to file the executed Reaffirmation Agreement. . . ." (Mot. at 2). The enforceability of the Reaffirmation Agreement hinges on when an agreement is "made" for purposes of § 524(c)(1). At the Hearing, McGuffee argued that the Reaffirmation Agreement was "made" in July 2015 via an exchange of e-mails between McGuffee and Therrell, even though the Debtor did not sign the Reaffirmation Agreement until after she received a discharge. The Court is tasked with determining whether a debtor must sign a reaffirmation agreement before receiving a discharge for it to be enforceable.

Section 524(c), which governs a debtor's ability to reaffirm a debt, contains two general requirements. First, the agreement is enforceable "only to any extent enforceable under applicable nonbankruptcy law . . . ." 11 U.S.C. § 524(c). Second, even if the agreement is enforceable under nonbankruptcy law, it must still meet the requirements of § 524(c)(1)-(6). Thus, even if a meeting of the minds is sufficient to create a binding contract for purposes of nonbankruptcy law, the Reaffirmation Agreement is only enforceable if it meets the additional requirements of § 524(c). One of those requirements is that a reaffirmation agreement between a debtor and a creditor be "made *before the granting of the discharge* under section 727, 1141, 1228, or 1328 of [the Code]." 11 U.S.C. § 524(c)(1) (emphasis added). "The bankruptcy court lacks

authority to vacate a discharge in order to allow the debtors to enter into a reaffirmation agreement." *In re Gordon*, No 15-30275-H3-7, 2015 WL 4099757, at *2 (Bankr. S.D. Tex. July 6, 2015). It is undisputed that the Reaffirmation Agreement was not signed by the Debtor until *after* the Debtor received a discharge and the Bankruptcy Case was closed. The parties argue that they have an enforceable Reaffirmation Agreement nonetheless because there was a meeting of the minds before discharge and the closing of the Bankruptcy Case.

The Fifth Circuit Court of Appeals has stressed that the "reaffirmation rules are intended to protect debtors from compromising their fresh start by making unwise contracts to repay dischargeable debts." *Sandburg Fin. Corp. v. Am. Rice, Inc. (In re Am. Rice),* 448 F. App'x 415, 419 (5th Cir. 2011). Section 524(c) provides three requirements for a reaffirmation agreement to be enforceable: (1) it must be made before the discharge is granted; (2) it must contain the disclosures set forth in § 524(k); and (3) it must be filed with the court and contain an affidavit of the attorney that represented the debtor during the course of negotiating an agreement stating that the agreement was voluntary, does not impose an undue hardship, and that the attorney advised the debtor of the legal effect and consequences of a reaffirmation agreement. "A reaffirmation contract which does not comply fully with Section 524 is void and unenforceable." *In re Am. Rice*, 448 F. App'x at 419; *Chase Auto. Fin. v. Kinion (In re Kinion),* 207 F.3d 751 (5th Cir. 2000) (holding that a proposed reaffirmation agreement was unenforceable because all of the requirements of § 524(c) were not met prior to the debtor's discharge).

This Court previously held that the reaffirmation agreement was "made" on the date of the last signature. In *In re Malone*, No. 13-52360-NPO, slip op. at *2 (Dkt. 31) (Bankr. S.D. Miss. May 14, 2014), the last party actually signed the reaffirmation agreement before the discharge, so

it was "made" *before* the debtors received their discharge. *Id.* It was therefore immaterial which party signed the reaffirmation agreement last because both parties signed the agreement before the bankruptcy case was closed. *Id.* at 2, n. 2. Thus, the Court granted the motion to reopen in *In re Malone* because the reaffirmation agreement was enforceable.[2] *Id.* Here, the issue is narrower than the issue in *In re Malone.* While both parties signed the reaffirmation agreement before the discharge in *In re Malone,* the Debtor did not sign the Reaffirmation Agreement until after her discharge in the Bankruptcy Case. Therefore, the issue here is whether a reaffirmation agreement is enforceable when the *debtor* did not sign the reaffirmation agreement until after discharge.

This Court has previously denied a motion for approval of a post-discharge reaffirmation agreement because the debtor did not sign the agreement *before* receiving a discharge. *In re Jones*, No. 12-13075-NPO, slip op at *1 (Dkt. 39) (Bankr. N.D. Miss. May 13, 2013) (holding that the reaffirmation agreement was not "made" pursuant to § 524(c)(1) because it was signed after the debtor received a discharge). Other bankruptcy courts within the Fifth Circuit also have held that an agreement is not "made" until it is signed. *See In re Gordon*, 2015 WL 4099757, at *1 (citing *Karras v. Hansen* (*In re Karras*), 165 B.R. 636 (N.D. Ill. 1994)); *In re Salas*, 431 B.R. 394, 396 (Bankr. W.D. Tex. 2010) (holding that "[m]ade means *signed* by the parties to the agreement"); *In re Merritt*, 366 B.R. 637 (Bankr. W.D. Tex. 2007) (holding that an agreement is "made" when the debtor signs it, rather than when a creditor signs it.)[3]

[2] The Court also found that § 524(c)(2)-(c)(3) were satisfied as well, rendering the reaffirmation agreement enforceable. *Id.*, at *3.

[3] In *In re Merritt*, the creditors prepared the document and sent it to the debtor's attorney for his and the debtor's signatures. *In re Merritt*, 366 B.R. at 641. The debtor and the debtor's counsel immediately signed the agreement and returned it to the creditor, who neglected to file it in

To protect debtors from entering into unwise reaffirmation agreement and to ensure that the parties have complied with § 524 in its entirety, the Court finds that one requirement that must be satisfied for an agreement to be "made" under § 524(c)(1) is that a debtor sign it. Although McGuffee and Therrell agreed that they exchanged e-mails outlining the details of the Reaffirmation Agreement, the Debtor did not actually sign the agreement until after she received a discharge. The e-mail exchange may have been sufficient to create an enforceable agreement under nonbankruptcy law, but the requirement of § 524(c)(1) that the agreement be "made" before the granting of a discharge was not satisfied because it was not signed by the Debtor until after the discharge was entered. The Court therefore finds that the Reaffirmation Agreement is unenforceable because it was not "made" before the Debtor received a discharge in August 2015. Accordingly, it would be futile to reopen the Bankruptcy Case. The Court therefore finds that the Motion should be denied.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

##END OF ORDER##

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accordance with § 524(c)(3). *Id.* The bankruptcy court in *In re Merritt* did not face the specific issue before this Court because the debtor did in fact sign the agreement and, therefore, the protections that § 524 grants to debtors were not compromised. In the Bankruptcy Case, it is undisputed that the Debtor did not sign the Reaffirmation Agreement until *after* receiving a discharge. The Court cannot enforce a reaffirmation agreement that was not signed by the debtor prior to discharge because there is no way to ensure that the requirements of § 524, which were implemented to protect debtors, were followed.