

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 03-12477

ORDER DENYING MOTION FOR DISCHARGE UNDER § 1328(b)

The relief set forth on the following pages, for a total of 4 pages including this page, is hereby ORDERED.

FILED BY THE COURT
03/20/2008



Entered: 03/21/2008

A handwritten signature in black ink, appearing to read "S. R. O.", written over a horizontal line.

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

C/A No. 03-12477-DD

Kenneth Harris,

Chapter 13

Debtor(s).

**ORDER DENYING MOTION FOR
DISCHARGE UNDER § 1328(b)**

THIS MATTER is before the Court on Kenneth Harris' ("Debtor") Motion for Hardship Discharge ("Motion"). A hearing was held in this matter on March 17, 2008. Debtor, by and through counsel, and the chapter 13 trustee ("Trustee") appeared at the hearing. Motions often called "motions for hardship discharge" are actually requests for discharge under 11 U.S.C § 1328(b).¹ Section 1328(b) states,

At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if--

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

§ 1328.

Debtor bears the burden of proof for all three elements under 11 U.S.C. § 1328(b).

In re Harrison, 1999 Bankr. LEXIS 1830 (Bankr. E.D. Va. 1999)(citing *Bandilli v.*

Boyajian (In re Bandilli), 231 B.R. 836, 839 (B.A.P. 1st Cir. 1999). The parties agree that

Debtor passes the chapter 7 liquidation test of § 1328(b)(2). In order to be eligible for a discharge pursuant to § 1328(b) Debtor must show (1) that his inability to complete plan

¹ Further references to the Bankruptcy Code shall be by section number only.

payments is due to circumstances for which the Debtor should not be held accountable, and (2) modification of the plan is not practicable.

I. Circumstances for which the Debtor should not be held accountable.

The reason Debtor cites for his inability to make plan payments is loss of employment. While the language of § 1328(b)(1) does not require a “catastrophic” event, it does require the Court to exercise “special vigilance” in its analysis. *Bandilli, Supra*. Some courts have specifically held that the loss of employment alone is not a circumstance that rises to the level necessary under § 1328(b)(1). *See Bandilli, Supra; In re Easley*, 240 B.R. 563, 565 (Bankr. W.D. Mo. 1999)(“[A] request for a hardship discharge is to be treated with some gravity, and th[e] the loss of employment alone is insufficient”); *In re Cummins*, 266 B.R. 852(Bankr, N.D. Iowa 2001)(Requiring more than just the temporary loss of a job or temporary physical disability); *See also Keith M. Lundin, Chapter 13 Bankruptcy, 3D Ed.* § 253.1 (2000 and Supp. 2004). This Court finds that the temporary loss of employment by a debtor who is in good health and capable of finding new employment, without more, does not satisfy the requirements of § 1328(b)(1).²

II. Practicality of modifying the plan.

Debtor bears the burden of proof. Debtor has offered no evidence nor did he even suggest during his testimony that modification of the plan is impractical. “In order to qualify for a hardship discharge, the Debtors must persuade the Court that they have complied with each subsection of section 1328(b).” *In re White*, 126 B.R. 542, 545 (Bankr. D. Ill. 1991). *See also In re Schleppi*, 103 B.R. 901, 904 (Bankr. D. Ohio

² The loss of employment in combination with other factors may meet the standards of § 1328(b)(1), but in the present case Debtor relied solely on loss of employment.

1989)(“The Debtor's failure to establish the impracticability of modification is, standing alone, fatal to the motion”). Debtor has failed to prove that he meets the requirements of § 1328(b)(3). Furthermore, at the hearing Trustee asked if he were given a three month moratorium, did Debtor believe he could find employment and resume payments after three months. His response was “definitely.” This leads the Court to the Conclusion that a motion for a three month moratorium may be Debtor’s avenue for relief.

Conclusion

Debtor has the burden of proof and has failed to prove the elements for a discharge pursuant to § 1328(b). Debtor’s Motion is Denied.

AND IT IS SO ORDERED.

Columbia, South Carolina

March 20, 2008