

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 06-06056

ORDER DENYING MOTION TO REOPEN CHAPTER 7 CASE

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

FILED BY THE COURT
11/29/2007



Entered: 11/29/2007

US Bankruptcy Court Judge
District of South Carolina

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

IN RE:

Kamechia Young,

Debtor(s).

C/A No. 06-06056-DD

Chapter 7

**ORDER DENYING MOTION TO
REOPEN CHAPTER 7 CASE**

THIS MATTER is before the Court on Kamechia Young's ("Debtor") Motion to Reopen Chapter 7 Case to file Reaffirmation Agreement with Wells Fargo ("Motion"). Debtor appeared by and through counsel at the hearing held on November 20, 2007. Debtor's counsel proffered testimony which evidenced that Debtor had some difficulty consummating a reaffirmation agreement with Wells Fargo, and that the effect of these difficulties caused the Debtor to be unable to file the reaffirmation agreement before her discharge was granted. Debtor now seeks to reopen her case for the sole purpose of filing a reaffirmation agreement between herself and Wells Fargo.

Bankruptcy Code section 11 U.S.C. § 524¹, states in relevant part,

An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if--

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title....

§ 524(c)(1).

The plain language of § 524(c)(1) states that in order for a reaffirmation agreement to be valid it must be filed before a discharge is granted. Numerous courts have upheld this view. *See In re Cassell*, 41 B.R. 737, 740(Bankr. E. D. Va. 1984)

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

("Subsequent to being granted a discharge, a debtor has no such option in that a debt may not be reaffirmed post-discharge). *See also In re Cottrill*, 2007 Bankr. LEXIS 2009, 4-5 (Bankr. N. D. W. Va. 2007)("The statute states that a reaffirmation agreement is valid 'only if' all elements of the statute are satisfied. Further, 'the statutory requirement cannot be waived or extended after discharge occurs;' otherwise, the statute would lose its protective intent. The timing requirement of § 524(c)(1) is mandatory because it is designed 'to protect the debtor from his or her own bad judgment....' Congress intentionally worded § 524(c) to protect the debtor from making ill advised decisions after having its debt discharged. Because § 524(c)(1) is not subject to waiver, the court refused the Debtors' request to ignore the plain language of the statute")(Internal Citations Omitted); *In re Wilhelm*, 369 B.R. 882, 883 (Bankr. M. D. N. C. 2007) ("Pursuant to Section 524(c), a reaffirmation agreement must be made prior to the entry of the order of discharge to be enforceable. Reaffirmation agreements entered into after the granting of a debtor's discharge have no legal significance")(Citations Omitted); *In re Stewart*, 355 B.R. 636 (Bankr. N. D. Ohio 2006)(holding that in order for a reaffirmation agreement to be enforceable and effective it must be entered into before the granting of a discharge, and further holding that the Court's equitable § 105 powers should not be used to give effect to an agreement filed after discharge is granted because § 105 powers are not to be used in a way that disregards unambiguous statutory language); *In re Lee*, 356 B.R. 177 (Bankr. N. D. W. Va. 2006)(citing *Mickens v. Waynesboro Dupont Emples. Credit Union, Inc. (In re Mickens)*, 229 B.R. 114, 118 (Bankr. W. D. Va. 1999)("The timing requirement [of Section 524(c)(1)] is imposed as a matter of substantive statutory law and not by procedural rule. While the date for discharge may be delayed in

appropriate cases . . . the statutory requirement cannot be waived or extended after discharge occurs").

Debtor cites no case law or secondary authority for her request that her case be reopened but relies § 105 as the basis for relief. The Fourth Circuit Court of Appeals has previously held,

[E]quitable powers emanating from § 105(a) are quite important in the general bankruptcy scheme, and while such powers may encourage courts to be innovative, and even original, these equitable powers are not a license for a court to disregard the clear language and meaning of the bankruptcy statutes and rules.”

Official Committee of Equity Sec. Holders v. Mabey, 832 F.2d 299, 302 (4th Cir. 1987).

Thus, the Court may use its § 105 powers to construct equitable remedies that are customized to the facts of an individual case, but that remedy may not be contrary to the Code and Rules.

Based on the plain language of § 524(c)(1) which requires a reaffirmation agreement to be entered into before the order granting discharge is entered and the applicable case law, this Court holds that after a discharge has been granted to a debtor the Court is without power to give effect to a reaffirmation agreement. The Motion before the Court requests that Debtor’s case be reopened in order to enter into a reaffirmation agreement. Since the Court can offer no relief even if the case were to be reopened Debtor’s Motion is denied.

AND IT IS SO ORDERED.

Columbia, South Carolina
November 29, 2007