

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

ALLEN M. GRIFFITHS,

Case No. 6:11-bk-05839-ABB

Chapter 7

Debtor.

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ORDER

This matter came before the Court on the Notice of Recession of Reaffirmation Agreement (Doc. No. 35) and Motion to Vacate Discharge Order (Doc. No. 37) filed by the Debtor Allen M. Griffiths seeking to rescind a reaffirmation agreement. A hearing was held on January 5, 2012 at which the Debtor and his counsel appeared. The rescission request is due to be denied.

Event Chronology

The Debtor, through counsel, filed this Chapter 7 case on April 21, 2011. The Debtor executed on May 16, 2011 a Reaffirmation Agreement with the secured creditor Community Credit Union of Florida to reaffirm a debt of \$49,938.58 secured by a 2003 Fleetwood Pace-Arrow recreational vehicle (the "RV"). Debtor's counsel executed the Reaffirmation Agreement certifying, among other things, the Debtor voluntarily entered into the agreement and the agreement does not impose an undue hardship on the Debtor. A representative of Community Credit Union executed the Reaffirmation Agreement on May 20, 2011 and filed it with the Court on May 20, 2011 (Doc. No. 11).

The Court, without a hearing, found the Reaffirmation Agreement to be in compliance with 11 U.S.C. Section 524(c) based upon the certifications of Debtor's counsel. The Debtor received a discharge pursuant to Section 727 on July 27, 2011 (Doc. No. 23).

The Debtor filed and served on Community Credit Union a Notice of Rescission of Reaffirmation Agreement on December 5, 2011 (Doc. No. 35) and the Motion to Vacate Discharge (Doc. No. 37) on December 12, 2011. The Debtor seeks to rescind the Reaffirmation Agreement and discharge Community Credit Union's debt.

The Debtor stated in open Court he executed the Reaffirmation Agreement with the intent to reside in the RV. He desires to rescind the Reaffirmation Agreement because his circumstances have changed and he cannot afford the RV. The creditor has repossessed the RV.

Analysis

The Court is statutorily prohibited from rescinding the Reaffirmation Agreement. Section 524(c)(4) of the Bankruptcy Code sets forth a reaffirmation agreement may be rescinded "at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim." 11 U.S.C. § 524(c)(4). The sixtieth day after the Reaffirmation Agreement was filed with the Court was July 19, 2011. The Debtor was required to rescind the Reaffirmation Agreement by July 27, 2011, the date of his discharge, which was the later date pursuant to 11 U.S.C. Section 524(c)(4).

The Debtor served the Notice of Rescission on Community Credit Union on December 5, 2011. The Debtor did not rescind the Reaffirmation Agreement prior to

receiving his discharge on July 27, 2011. The Notice of Rescission is untimely and of no effect pursuant to 11 U.S.C. Section 524(c)(4).

The Debtor, alternatively, seeks to vacate his discharge and then re-serve and re-file the Notice of Rescission. Section 727 of the Bankruptcy Code directs the Court to revoke a discharge in certain narrowly defined circumstances. The Court, upon a request by “the trustee, a creditor, or the United States Trustee” and after notice and a hearing, “shall revoke a discharge” if:

- (i) the discharge was obtained through fraud unbeknownst to the movant until after the discharge was granted;
- (ii) the debtor knowingly and fraudulently failed to disclose the acquisition of property of the estate, or that she became entitled to acquire property that would be property of the estate;
- (iii) the debtor, as set forth in 11 U.S.C. Section 727(a)(6), refused to obey a lawful order of the Court, to respond to a material question, or to testify; or
- (iv) the debtor failed to explain satisfactorily either a material misstatement in a bankruptcy audit or failed to make necessary records available for inspection in a bankruptcy audit.

11 U.S.C. § 727(d).

Revocation may only be sought by a trustee, creditor, or the United States Trustee pursuant to the plain and unambiguous language of Section 727(d). Markovich v. Samson (In re Markovich), 207 B.R. 909, 911-12 (9th Cir. BAP 1997). Section 727(d) allows for revocation only in the circumstances precisely defined by Congress involving fraudulent acts, misrepresentations, or failures to cooperate by a debtor. The narrowness of Section 727(d) and the absence of any other provision in the Bankruptcy Code allowing for revocation of a Chapter 7 discharge are purposeful. The discharge and the

discharge injunction of 11 U.S.C. Section 524 are fundamental to a debtor's fresh start. Hardy v. I.R.S. (In re Hardy), 97 F.3d 1384, 1388-89 (11th Cir. 1996).

To allow the Debtor to vacate his discharge would undermine the sanctity of the Chapter 7 discharge and circumvent the clear and unambiguous reaffirmation rescission deadline of Section 524(c)(4). The relief the Debtor seeks is not authorized by the Bankruptcy Code.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Notice of Rescission of Reaffirmation Agreement (Doc. No. 35) is hereby **VOID AND OF NO EFFECT** and the Debtor's Motion to Vacate Discharge Order (Doc. No. 37) is hereby **DENIED**. The Reaffirmation Agreement between the Debtor and Community Credit Union of Florida (Doc. No. 11) is in full force and effect pursuant to 11 U.S.C. Section 524(c).

Dated this 9th day of January, 2012.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge