


ORDERED.

Dated: February 12, 2016


Cynthia C. Jackson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

JOSE ROBERT QUEVEDO,

Debtor.

Case No. 6:15-bk-00580-CCJ
Chapter 7

ORDER DENYING DEBTOR'S MOTION
TO VACATE CHAPTER 7 DISCHARGE AND CONVERT TO CHAPTER 13

This case came before the Court for hearing on October 28, 2015, for consideration of the Debtor's Motion to Vacate Chapter 7 Discharge and Convert to Chapter 13 (Doc. No. 24; the "Motion").

Facts

The facts of this case are undisputed. The Debtor received his Chapter 7 discharge on May 5, 2015. The Chapter 7 case remains pending and the Chapter 7 Trustee has discovered assets and is in the process of liquidating those assets for the benefit of the Debtor's creditors. By the Motion, the Debtor asserts that he wants to convert his Chapter 7 case to a Chapter 13

because he is now employed and has property, including his homestead, that he wishes to keep. Since the debtor is able to keep his homestead in Chapter 7, it is unclear why a revocation of discharge helps. The Court can only presume that the reason the Debtor wants to revoke his discharge is to strip a lien and avoid the prohibition of Section 1328(f). Regardless of the reason for conversion, under no circumstance may the Debtor revoke his own discharge.

Discussion

Section 727(d) is the only Bankruptcy Code Section which permits a Chapter 7 discharge to be revoked. That section provides for revocation only under limited circumstances and even then, only upon the request of the “trustee, a creditor or the United States Trustee.”¹

Every published decision that has considered Section 727(d) has held that a debtor has no right or standing to revoke his own discharge.

At the hearing on the Motion, the Debtor argued that courts are split regarding whether a debtor is permitted to vacate his own discharge. The Debtor cited to three bankruptcy court cases from outside of the Eleventh Circuit, all of which are at least a decade old and stand for the proposition that a debtor may vacate his own discharge to obtain court approval of a reaffirmation agreement.² The Debtor asserts that this authority should extend to the facts of the present case to enable the Debtor to vacate his Chapter 7 discharge and convert his case to one under Chapter 13.

The Court finds the Debtor’s argument unpersuasive. The cases that the Debtor references hardly constitute a split from the wealth of authority holding that a debtor's desire to enter into a reaffirmation agreement does not constitute sufficient cause to vacate a discharge

¹ 11 U.S.C. § 727(d).

² See *In re Edwards*, 236 B.R. 124 (Bankr. D.N.H. 1999); *In re Long*, 22 B.R. 152 (Bankr. D. Me. 1982); *In re Solomon*, 15 B.R. 105 (Bankr. E.D. Pa. 1981).

order.³ Further, none of the cases the Debtor cites specifically address whether a debtor may vacate his own discharge to convert a case to one under another chapter of the Bankruptcy Code. This Court agrees with the reasoning of Judge Briskman in *In re Gomez*, a case directly on point. A debtor cannot revoke his own discharge for any reason, pursuant to the plain and unambiguous language of the Bankruptcy Code.⁴ Because the relief the Debtor seeks is not authorized by the Bankruptcy Code, it is

ORDERED that:

1. The Motion is denied.
2. The Debtor's Chapter 7 Discharge remains in effect.

Attorney Kathleen S. Davies is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of this order.

³ See e.g., *In re Wilhelm*, 369 B.R. 882, 884 (Bankr. M.D.N.C. 2007) (holding that it is improper to vacate an order of discharge to allow the debtor to enter into a reaffirmation agreement); *In re Stewart*, 355 B.R. 636, 639 (Bankr. N.D. Ohio 2006) (holding that the court could not use its equitable powers under Section 105 to vacate a discharge order for the purpose of allowing a debtor to enter into a reaffirmation agreement); *In re Rigal*, 254 B.R. 145, 148 (Bankr. S.D. Tex. 2000) (rejecting the argument that the court had the authority to revoke a discharge for the purpose of entering into a reaffirmation agreement under Fed. R. Bankr. P. 9024); *In re Brinkman*, 123 B.R. 611, 612 (Bankr. N.D. Ind. 1991) (finding that a debtor's wish to reaffirm a debt was not cause for the revocation of a discharge pursuant to Section 727(d)).

⁴ *In re Gomez*, 456 B.R. 574, 577 (Bankr. M.D. Fla. 2011) (citing *In re Markovich*, 207 B.R. 909, 911-12 (B.A.P. 9th Cir. 1997)).