

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
WILLIAM LEE HODGES and)	CASE NO. 09-34018 HCD
ELIZABETH ANNA HODGES,)	CHAPTER 7
aka ELIZABETH ANNA BRIGGS,)	
)	
DEBTORS.)	

ORDER

At South Bend, Indiana, on March 16, 2011.

Before the court is the debtors' "Motion to Re-Open Chapter 7 Bankruptcy for Amendment."

The former debtors seek to reopen and amend their chapter 7 case in order that their mortgage, held by Wells Fargo Home Mortgage ("Wells Fargo"), be excluded from their discharged debts in the bankruptcy.

When the debtors filed their chapter 7 case, they were indebted to Wells Fargo as the creditor holding a mortgage on their residence. The debtors indicated that they wanted to reaffirm the mortgage debt owed to Wells Fargo. However, no reaffirmation agreement was made. The chapter 7 Trustee filed a report of no distribution; the debtors were discharged and the case was closed. Almost one year later, the debtors filed this motion to reopen the case. In the motion, the debtors admitted that they failed to file a reaffirmation agreement; in fact, they stated that Wells Fargo rejected their proffered reaffirmation agreement and refused to report their credit history to the major credit bureaus. Having been unsuccessful in obtaining a reaffirmation agreement, the debtors want this court to reopen their bankruptcy case in order to exclude the mortgage from the discharged debts so that they can continue to pay the mortgage loan.

The reopening of a bankruptcy case is governed by Section 350(b) of the Bankruptcy Code, which states that the "case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). The decision to reopen is left to the broad discretion of the bankruptcy court. *See Redmond v. Fifth Third Bank*, 624 F.3d 793, 798 (7th Cir.

2010) (citing *In re Bianucci*, 4 F.3d 526, 528 (7th Cir. 1993)). The party seeking to reopen the case bears the burden of proving that there is cause. See *In re Redmond*, 380 B.R. 179, 186 (Bankr. N.D. Ill. 2007). In this case, the reopening of the bankruptcy was requested to accord relief to the debtors. They wanted to continue or reaffirm their obligation to pay the Wells Fargo mortgage loan by excluding the debt from their discharged debts.

The purpose of a chapter 7 bankruptcy is to give individual debtors a fresh start by “discharg[ing] the debtor from all debts that arose before the date of the order for relief.” 11 U.S.C. § 727(b). However, “[i]n general, ‘the appropriate way to waive discharge as to a specific debt, as opposed to waiving the discharge in the bankruptcy case, is through the use of reaffirmation agreements.’” *In re Fellheimer*, _ B.R. _, 2010 WL 4008461 at *11 (Bankr. E.D. Pa. Oct. 13, 2010) (citing *In re Rul-Lan*, 186 B.R. 938, 943 (Bankr. W.D Mo. 1995)). When a debtor wants to be legally bound to repay an obligation despite discharge in bankruptcy, he is permitted, under the Bankruptcy Code, to reaffirm the debt as long as he follows the detailed procedure set out by the provisions of § 524(c), (d) and (k). See *id.* (citing *Matter of Duke*, 79 F.3d 43, 44 (7th Cir. 1996), and other cases).

These debtors knew that they could agree to repay the mortgage debt, after their bankruptcy petition was filed, by filing a reaffirmation agreement. They told the court that they intended to retain the secured property and to reaffirm the underlying debt. However, they did not and could not file a reaffirmation agreement because Wells Fargo rejected it. Consequently, when the discharge was entered, the Wells Fargo debt was discharged as a matter of law under § 727(b).

Section 524(c) of the Bankruptcy Code allows a debtor to enter into an agreement with a creditor to reaffirm a debt so that it will not be discharged along with the other debts when the debtor emerges from bankruptcy. See *In re Turner*, 156 F.3d 713, 715 (7th Cir. 1998) (“Reaffirmation thus permits the debtor who cannot pay off the debt immediately to continue making periodic payments as before and to keep the property for which the debt was incurred.”). Fundamental to this practice of reaffirming a debt is the

“‘overarching requirement’ that reaffirmation represent a ‘meeting of the minds.’” *In re Parker*, 309 B.R. 664, 666 (Bankr. D. Mass. 2004). Neither the debtor nor the creditor is obliged to agree to a reaffirmation. In this case, the creditor did not consent to the agreement. *See id.* at 667 (“[A] creditor retains the right to reject any and all reaffirmation proposals, for whatever reason.”).

In addition, § 524(c) establishes requirements that must be met for a reaffirmation agreement to be enforceable, but that were not met herein.¹ *See, e.g., Cox v. Zale Delaware, Inc.*, 239 F.3d 901, 912 (7th Cir. 2001) (holding that a reaffirmation agreement that was never filed with the court was invalid). As the facts in this case demonstrate, no reaffirmation agreement was entered into, prior to the entry of the debtors’ discharge, and no agreement was filed with the court. Even if the debtors were to coax Wells Fargo into an agreement now, a reaffirmation agreement made after entry of the discharge is unenforceable. *See In re Pettet*, 271 B.R. 855, 856 (Bankr. S.D. Ind. 2002).

However, it is clear that the parties came to no agreement, during or after the bankruptcy, to continue the prepetition agreement. Without a mutual agreement between the parties that the debt is reaffirmed rather than discharged, the court cannot require the bank to “agree.” *See In re Amoakohene*, 299 B.R. 196, 199 (Bankr. N.D. Ill. 2003) (“[T]he law is clear that a reaffirmation agreement is just that, an agreement, and the Court cannot coerce an offeree-creditor to enter the same.”); *see also In re Fellheimer*, __ B.R. __, 2010 WL 4008461 at *16 (“Congress intended that reaffirmation agreements under section 524(c), (d) and (k) be the sole method by which creditors holding a dischargeable debt may create a legally enforceable obligation.”).

¹ The statute requires that the agreement is enforceable only if –

- (1) such agreement was *made before the granting of the discharge . . .*;
- (2) the debtor received the disclosures . . . at or before the time at which the debtor *signed the agreement*;
- (3) such agreement has been *filed with the court . . .*

11 U.S.C. § 524(c) (emphasis added). The statute provides six requirements in all; these three are applicable to this case and were not satisfied.

For the reasons presented in this Order, therefore, the court in its discretion finds no cause for reopening the debtors' chapter 7 case pursuant to 11 U.S.C. § 350(b). The Motion to Reopen filed by the former debtors William Lee Hodges and Elizabeth Anna Hodges (aka Elizabeth Anna Briggs) is denied.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT