

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: July 05 2011

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No. 10-30897
	)	
Timothy J. Mueller	)	Chapter 7
	)	
	)	
Debtor(s).	)	JUDGE MARY ANN WHIPPLE
	)	

**ORDER**

This court held a hearing on Debtor’s Motion to Reopen this Chapter 7 case [Doc. # 26] (“Motion”). Attorney for Debtor appeared in person.

Debtor wants to reopen this case to file a reaffirmation agreements with Santander Consumer.

Under Rule 4008(a) of the Federal Rules of Bankruptcy Procedure, reaffirmation agreements “shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code.” *But see In re Parker*, 372 B.R. 835 (Bankr. W.D. Tex. 2007)(court holds that Rule 4008 conflicts with the statute and must be disregarded, so statutory deadline for filing a reaffirmation agreement is any time before discharge). The deadline for filing reaffirmation agreements in this case was nearly a year ago on June 14, 2010. Debtor’s discharge was entered on June 16, 2010. This case was closed on June 21, 2010, after the Trustee completed administration of the estate.

Rule 4008(a) permits the time for filing reaffirmation agreements to be enlarged “at any time.”

Notwithstanding that the filing deadline may be extended at any time, the Bankruptcy Code still requires reaffirmation agreements to be entered into before a debtor's discharge. *See* 11 U.S.C. § 524(c)(1); *In re Golladay*, 391 B.R. 417, 421 (Bankr. C.D. Ill. 2008). The Reaffirmation Agreement was not signed by both parties and entered into until after Debtor's discharge nearly a year ago. The Reaffirmation Agreement therefore does not comply with the statute and would not be enforceable regardless whether the case is reopened, the filing deadline is enlarged and the documents then filed. Nor would it be appropriate to vacate the discharge to attempt to address the enforceability problem. *In re Stewart*, 355 B.R. 636 (Bankr. N.D. Ohio 2006).

As the proposed reaffirmation agreement is unenforceable in any event, whether the case is reopened and whether the filing deadline is extended or not, reopening this case to file it would be a futile act because the document would then be stricken from the court record.

**IT IS THEREFORE ORDERED** that the Debtor's Motion to Reopen this Chapter 7 case [Doc. # 26] is hereby **DENIED**, without prejudice.