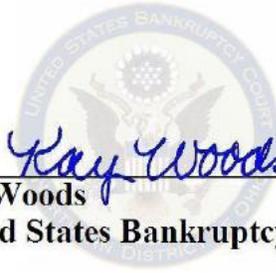


IT IS SO ORDERED.

Dated: January 5, 2016  
02:52:07 PM



*Kay Woods*  
 \_\_\_\_\_  
 Kay Woods  
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

PAMELA L. SCHULLER,

Debtor.

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CASE NUMBER 15-41336

CHAPTER 7

HONORABLE KAY WOODS

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 MEMORANDUM OPINION REGARDING MOTION TO  
 EXTEND TIME TO FILE REAFFIRMATION AGREEMENT  
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This cause is before the Court on Motion to Extend Time to File Reaffirmation Agreement ("Motion to Extend Time") (Doc. 24) filed by U.S. Bank National Association ("U.S. Bank") on December 30, 2015.

Debtor Pamela L. Schuller filed a voluntary petition pursuant to chapter 7 of the United States Code on July 24, 2015. The first meeting of creditors held pursuant to 11 U.S.C. § 341 was scheduled

for September 1, 2015. The Debtor was granted a discharge on November 6, 2015 ("Discharge Date") (Doc. 21).

U.S. Bank seeks to file a reaffirmation agreement (attached to its Motion to Extend Time) that it made with the Debtor concerning the Debtor's mortgage on real property located at "1323 Niles Cortland, Niles, Ohio 4446" ("Reaffirmation Agreement"). (Mot. at 3.) The Reaffirmation Agreement was signed by the Debtor on August 21, 2015 and was signed by U.S. Bank on November 10, 2015.<sup>1</sup> (*Id.* at 1.) However, prior to execution of the Reaffirmation Agreement by U.S. Bank, the Debtor received a discharge on November 6, 2015. (Doc. 21.)

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and Gen. Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

### **I. ANALYSIS**

Section 524(c) details the requirements for a reaffirmation agreement to be valid and enforceable.

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<sup>1</sup> Federal Rule of Bankruptcy Procedure 4008 states "A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code." FED. R. BANKR. P. 4008 (2016). In this case, the first meeting of creditors was scheduled for September 1, 2015, which triggered a filing deadline of November 2, 2015.

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, . . . only if --

(1) such agreement was made before the granting of the discharge under section 727 . . . of this title[.]

11 U.S.C. § 524(c) (2016) (emphasis added). Although § 524 requires that a reaffirmation agreement be made before a discharge is granted to a chapter 7 debtor, the Bankruptcy Code does not define "made."

This Court previously addressed this issue in *In re Giglio*, 428 B.R. 397 (Bankr. N.D. Ohio 2009). In *Giglio*, the creditor sought reconsideration of an order disapproving a reaffirmation agreement when the creditor executed the agreement post-discharge. Despite the debtor's statement of intent indicating her desire to reaffirm the debt and her execution of the reaffirmation agreement prior to the entry of her discharge, this Court held that the agreement was not "made" until there was a "meeting of the minds," which could not have occurred before the creditor signed (the second party to sign) the agreement. *Id.* "As a consequence, the Court [found] that the [r]eaffirmation [a]greement was made nearly three months after the [d]ischarge [d]ate. Being untimely, the [r]eaffirmation [a]greement [was] not valid and enforceable . . . ." *Id.* at 402.

Furthermore, this Court looked to *In re Golladay*, 391 B.R. 417 (Bankr. C.D. Ill. 2008), wherein the court held:

[I]t is not the filing of the agreement prior to the discharge date which is a necessary prerequisite for its validity; rather, it is the entering into the agreement, i.e. the full and complete execution of an agreement which satisfies the terms of the Bankruptcy Code and, particularly § 524(c), by all parties thereto which controls.

*In re Golladay*, 391 B.R. 417 at 422 (emphasis added).

Congressional intent is also indicative: "Congress did not contemplate the involvement of a bankruptcy court in reaffirmation agreements if the requirements of 11 U.S.C. § 524(c) were not met." *In re Giglio*, 428 B.R. at 402 (citing *In re Reed*, 177 B.R. 258, 259 (Bankr.N.D.Ohio 1995)). "Once the order of discharge is entered, the § 524(c) deadline is passed, and the court cannot enter the agreement." *Id.* (quoting *In re Cottrill*, 2007 Bankr. LEXIS 2009 at \*14 (Bankr. N.D. W.Va. 2007)). "The timing requirement in § 524(c)(1) cannot be waived because it exists for the benefit and protection of the debtor." *Id.* Similar to the situation in *Giglio*, here it is the creditor, U.S. Bank, rather than the Debtor, which seeks to have this Court disregard the protection in § 524(c)(1).

The timing requirement of § 524(c)(1) is mandatory because it is designed to protect the debtor from his or her own bad judgment. . . . [Section] 524(c) exists to protect debtor from his own actions. . . . [T]he requirements of § 524(c) were not subject to waiver by a debtor because they exist to protect a debtor from the debtor's own bad judgment, and the debtor cannot waive

them. . . . [A]ny waiver of the discharge of a particular debt must strictly follow the procedures prescribed in the Bankruptcy Code and the Bankruptcy Rules, especially § 524(c). . . . [Section] 524(c)(1) requires the reaffirmation agreement be entered into prior to the granting of the discharge as an additional protection for the debtor.

*Id.* at 402-403 (quoting *In re Cottrill*, 2007 Bankr. LEXIS 2009 at \*5-6 (internal citations omitted).) As explained in *Golladay*, “[the] timing requirement [of § 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.” *In re Golladay*, 391 B.R. at 422.

## **II. CONCLUSION**

This Court finds that the Motion to Extend Time is not well taken. U.S. Bank has not presented valid grounds to support its request. In fact, on the face of its Motion to Extend Time, U.S. Bank makes clear that the Reaffirmation Agreement was not made until after the Discharge Date when a representative of U.S. Bank signed the agreement on November 10, 2015. Merely extending the deadline in which to “file” such Reaffirmation Agreement would be a useless act. Pursuant to 11 U.S.C. § 524(c)(1), a reaffirmation agreement is enforceable only if the reaffirmation agreement “was made before the granting of the discharge.” As a consequence,

this Court will deny the Motion to Extend Time. An appropriate order will follow.

# # #

IT IS SO ORDERED.

Dated: January 5, 2016  
02:52:07 PM

  
*Kay Woods*  
\_\_\_\_\_  
Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

PAMELA L. SCHULLER,

Debtor.

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CASE NUMBER 15-41336

CHAPTER 7

HONORABLE KAY WOODS

\*\*\*\*\*  
ORDER DENYING MOTION TO EXTEND TIME  
TO FILE REAFFIRMATION AGREEMENT  
\*\*\*\*\*

This cause is before the Court on Motion to Extend Time to File Reaffirmation Agreement ("Motion to Extend Time") (Doc. 24) filed by U.S. Bank National Association ("U.S. Bank") on December 30, 2015.

For the reasons set forth in the Court's Memorandum Opinion entered on this date, the Court finds that the Motion to Extend Time is not well taken. U.S. Bank has not presented valid grounds to support its request. In fact, on the face of its Motion to

Extend Time, U.S. Bank makes clear that its reaffirmation agreement was not made until after the discharge date when a representative of U.S. Bank signed the agreement on November 10, 2015. Merely extending the deadline in which to "file" such Reaffirmation Agreement would be a useless act. Pursuant to 11 U.S.C. § 524(c)(1), a reaffirmation agreement is enforceable only if the reaffirmation agreement "was made before the granting of the discharge." As a consequence, the Court hereby **DENIES** U.S. Bank's Motion to Extend Time.

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