UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

	)	CHAPTER 13
	)	
IN RE:	)	
	)	
	)	CASE NO. 02-62903
LINDA LYVONE WRIGHT,	)	
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	)	JUDGE RUSS KENDIG
Debtor.	)	
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	)	**MEMORANDUM OF DECISION**
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Before the court is the objection to claims filed by the debtor Linda Lyvone Wright (hereafter "Debtor"), the response thereto filed by creditor Bank One (hereafter "Bank One"), the parties' joint stipulations and briefs in support.[1]

Jurisdiction

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, the general order of reference entered in this district on July 16, 1984 and 28 U.S.C. § 157(b)(2)(A) and (B). The following constitutes the court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

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[1] The Chapter 13 trustee (hereafter "Trustee") filed a modification of Debtor's Chapter 13 reorganization plan to which Debtor objected. This matter was set for hearing at the same time as the objection to claims. As will be discussed below, the outcome of the request for modification is contingent upon the ruling on the objection to claims, but as the objection to modification was not briefed, that matter will not be discussed in the same detail as the objection to claims.

Facts

Debtor filed a petition under Chapter 7 on March 29, 2001. She was granted a discharge on July 27, 2001. Subsequent to her discharge, on August 3, 2001, Debtor executed a reaffirmation agreement with Bank One, a secured lender that extended a home equity line of credit to Debtor in 1999. Bank One executed the reaffirmation agreement on August 30, 2001. The reaffirmation agreement was filed September 5, 2001.

Pursuant to the reaffirmation agreement, Debtor's mortgage payment to Bank One was reduced from $456.64 to $351.68 per month and the annual percentage rate was reduced from 9.25 percent to 8.93 percent. Payments commenced August 2001, and the repayment period was for 30 years. In return for Debtor's beneficial repayment terms, Debtor agreed to the nondischargeability of her personal liability on the underlying note to Bank One.

Debtor tendered checks to Bank One in the amount of $351.68 for each month from August 2001 to December 2001. Bank One negotiated these checks. When Debtor tendered her January 2002 payment, Bank One returned the check uncashed.

Debtor filed a petition under Chapter 13 on June 25, 2002.[2] Her reorganization plan was confirmed on September 4, 2002. Her plan purported to pay Bank One $351.68 per month, through the Trustee, for her current monthly mortgage obligation and $3,000.00 through the life of the plan for an arrearage owed Bank One. Bank One did not object. On August 5, 2002, Bank One filed a proof of claim, which was amended on September 26, 2002. In support of its claims, Bank One attached the original note entered into between Debtor and Bank One, listed the monthly mortgage payment as $456.64 and listed the arrearage claim as $5,919.33.

Debtor filed an objection to Bank One's proofs of claim, and Bank One responded. Trustee filed a modification of Debtor's plan based on the higher monthly mortgage payment listed in Bank One's proofs of claim, and Debtor filed an objection thereto.

Arguments

Debtor advances three arguments in support of her position. First, Debtor argues that the reaffirmation agreement, although admittedly invalid as a reaffirmation agreement because of its execution subsequent to the discharge date, constitutes a new contract between Debtor and Bank One.

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[2] Debtor retained different counsel than the counsel who had assisted her in filing the Chapter 7 bankruptcy case and in negotiating the reaffirmation agreement.

Second, Debtor argues that Bank One's acceptance of the new, lower payment terms under the new contract means that Bank One is estopped from rejecting the payments as Debtor has relied to her detriment on Bank One's acceptance. Third, Debtor argues that Bank One failed to object to confirmation of Debtor's reorganization plan, so Bank One cannot file a proof of claim that is contrary to the terms in Debtor's confirmed plan.

Bank One counters Debtor's arguments with the following. Bank One argues that the reaffirmation agreement between Debtor and Bank One is unenforceable because it was executed after Debtor's discharge was granted. Bank One argues that the reaffirmation agreement is not valid as a new, postdischarge contract between Debtor and Bank One because Bank One would not have entered into the contract if Bank One had known that it could not enforce the nondischargeability of Debtor's personal liability on the note. Bank One argues that because the contract is unilaterally enforceable, the contract is void. Bank One counters that an application of promissory estoppel is inappropriate as Debtor's reliance on the postdischarge contract was unreasonable. Bank One asserts that it stopped accepting Debtor's $351.68 mortgage payments once it realized the reaffirmation agreement was unenforceable. Finally, Bank One argues that it did not waive its rights to file a contrary proof of claim by failing to object to the confirmation of Debtor's plan. Bank One argues that a debtor may not modify the rights of a security interest in the debtor's principal residence through a Chapter 13 plan pursuant to 11 U.S.C. § 1322(b)(2).

Analysis

I. Burden of Proof on Objection to Proofs of Claim

A proof of claim is prima facie evidence of the claim's validity and amount under 11 U.S.C. § 502(a) and Federal Rule of Bankruptcy Procedure 3001(f). *See* 11 U.S.C. § 502(a) and Fed. R. Bankr. P. 3001(f); In re Consolidated Pioneer Mortgage, 178 B.R. 222, 225-26 (B.A.P. 9th Cir. 1995), *aff'd on other grounds*, 91 F.3d 151 (9th Cir. 1996) (Table, Text in Westlaw, No. 95-55491). An objecting party has the burden of proof as to the invalidity or incorrect amount of a claim. In re Allegheny Int'l, 954 F.2d 167, 173-74 (3rd Cir. 1992). Once this burden is met, the burden of proof shifts back to the claimant to prove the validity of the claim by a preponderance of the evidence. Id.; In re Bosak, 242 B.R. 400, 405 (Bankr. N.D. Ohio 1999); In re Nelson, 206 B.R. 869, 878 (Bankr. N.D. Ohio 1997). Thus, under 11 U.S.C. § 502(a), Bank One's proofs of claim are presumptive evidence as to their validity and amount. Debtor is required to rebut this presumption by a preponderance of evidence in order to prevail on her objection. In re Allegheny Int'l, 954 F.2d at 173-74.

II. Enforceability of Reaffirmation Agreement

A debtor may reaffirm an otherwise dischargeable debt by executing a reaffirmation agreement with a specific creditor. In re Graham, 297 B.R. 695, 697 (Bankr. E.D. Tenn. 2003) (*citing* In re

Strong, 232 B.R. 921, 923 (Bankr. E.D. Tenn. 1999)). Section 524(c) of the Bankruptcy Code covers reaffirmation agreements. 11 U.S.C. § 524(c). In order to be a valid and enforceable reaffirmation agreement, a reaffirmation agreement "must strictly comply with all of the requirements set forth in § 524(c)." Graham, 297 B.R. at 697 (*citing* In re Cruz, 254 B.R. 801, 814-15 (Bankr. S.D.N.Y. 2000)). These requirements include that a reaffirmation agreement must be "made before the granting of the discharge under section 727 . . . of [the Bankruptcy Code]." 11 U.S.C. § 524(c)(1). "[T]he unambiguous language of [§ 524(c) states that] reaffirmation agreements must be entered into prior to discharge to have legal significance. Those entered into after entry of a discharge are unenforceable, and are of no legal significance." In re Eccleston, 70 B.R. 210, 212 (Bankr. N.D.N.Y. 1986). "Section 524(c)(1) is generally construed to require that the parties to the reaffirmation agreement *executed the document prior to the debtor's discharge* in order for the agreement to be valid and binding." Graham, 297 B.R. at 699 (emphasis added) (*citing* In re Collins, 243 B.R. 217, 220 (Bankr. D. Conn. 2000) ("[F]or Section 524(c)(1) purposes, a reaffirmation agreement is 'made' no earlier than the time when the requisite writing which embodies it has been fully executed by the debtor[.]")).

In the case at bar, Debtor executed the reaffirmation agreement seven days and Bank One executed it thirty-four days after the granting of Debtor's discharge. The reaffirmation agreement is unenforceable and, as such, does not bar the discharge of Debtor's personal liability on the note to Bank One. However, Debtor argues that the reaffirmation agreement is enforceable as a postdischarge contract between Debtor and Bank One. An analysis of this will be undertaken next.

III. Enforceability of Reaffirmation Agreement as a Postdischarge Contract

A. Sufficiency of Consideration

In the present case, the reaffirmation agreement's enforceability as a postdischarge contract is a matter of state law. Under state law,

> [a] contract consists of an offer, an acceptance, and consideration. Without consideration, there can be no contract. Under Ohio law, consideration consists of either a benefit to the promisor or a detriment to the promisee. To constitute consideration, the benefit or detriment must be "bargained for." Something is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. In fact, a benefit need not even be actual, as in the nature of a profit, or be as economically valuable as whatever the promisor promises in exchange for the benefit; it need only be something regarded by the promisor as beneficial enough to induce his promise.

Carlisle v. T&R Excavating, Inc., 123 Ohio App.3d. 277, 283 (Ohio App. 9th Dist. 1997) (citations omitted). Consideration can come in many forms and "among those recognized as sufficient to support a contract is the consideration of mutual promises, or a promise for a promise." Koon v. Hoskins, 1996 WL 30018, *4 (Ohio App. 4th Dist. 1996) (*citing* Stewart v. Herron, 77 Ohio St. 130, 146-47 (1907)).

There was an offer and acceptance as evidenced by the parties' execution of the reaffirmation agreement, but it is not clear that there was sufficient consideration to support the formation of a contract. "[T]he pivotal factor which serves to establish a valid post discharge contract is the existence of some separate consideration for the subsequent agreement." Minster State Bank v. Heirholzer (In re Heirholzer), 170 B.R. 938, 940 (Bankr. N.D. Ohio 1994) (*citing* In re Artzt, 145 B.R. 866 (Bankr. E.D. Tex. 1992)).

According to the terms of the reaffirmation agreement, or postdischarge contract as Debtor envisions it, Debtor agreed to the nondischargeability of her personal liability on the note owed Bank One, and in return, Bank One agreed to lower the monthly payment amount and the annual interest rate. However, since Bank One was unable to enforce the reaffirmation agreement, the consideration fails. "Absence of consideration is a sufficient ground for the cancellation of [a] contract." Koon, 1996 WL 30018 at *4 (*citing* Software Clearing House, Inc. v. Intrak, Inc., 66 Ohio App.3d 163, 175 (1990) (citation omitted)). Accordingly, the reaffirmation agreement is unenforceable as a postdischarge contract.

B. Application of Promissory Estoppel

Debtor argues that Bank One's acceptance of Debtor's payments under the terms of the new contract estops Bank One from rejecting the contract as Debtor relied to her detriment on Bank One's acceptance. In order to raise a promissory estoppel claim successfully, a party "'must have relied on [the] conduct of an adversary in such a manner as to change his position for the worse and the reliance must have been *reasonable* in that the party claiming estoppel did not know and could not have known that its adversary's conduct was misleading.'" Shampton v. City of Springboro, 98 Ohio St.3d 457, 461 (2003) (*quoting* Ohio State Bd. of Pharmacy v. Frantz, 51 Ohio St.3d 143, 145 (1990) (emphasis added) (citation omitted)).

Certainly, Debtor's reliance was not reasonable as Debtor executed the reaffirmation agreement herself seven days after the granting of her discharge. Debtor cannot have expected Bank One to honor an agreement to which it was bound but Debtor was not. As Debtor's reliance was unreasonable, her promissory estoppel argument fails.

IV. Failure to Object to Confirmation of the Reorganization Plan

Debtor argues that Bank One is estopped from filing a proof of claim that contains terms

contrary to those set forth in Debtor's confirmed plan because Bank One failed to object to confirmation of the plan. Debtor's argument is without merit. In regard to the monthly mortgage payment and the annual percentage rate, the two terms modified in the reaffirmation agreement, which are of most import in the present matter, Debtor's plan contains the following language: "Regular mortgage payments secured by real estate should be calculated to begin paying in September 1, 2002 at $351.68 per month." Ch. 13 Plan, Dkt. No. 2. This language fails to contain a prohibition against the filing of a proof of claim containing a different monthly payment amount and fails to contain the lower annual interest rate negotiated for in the reaffirmation agreement. The language is so brief that it is unclear what it means. Bank One's failure to object to confirmation of the plan was not fatal, and its proofs of claim should be allowed as filed.

Conclusion

Based on the foregoing discussion, Debtor has failed to meet her burden of proof as to the invalidity and incorrect amounts in the proofs of claim.

Trustee filed a modification of Debtor's reorganization plan based on the increased monthly mortgage amounts in Bank One's proofs of claim. Debtor objected to this modification. Based on the same foregoing discussion, Debtor's objection to Trustee's modification must fail.

An order in accordance with this memorandum of decision shall enter forthwith.

Russ Kendig
United States Bankruptcy Judge

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Debtor.	)	JUDGE RUSS KENDIG
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	)	**ORDER**
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The debtor Linda Lyvone Wright (hereafter "Debtor") filed an objection to the proofs of claim filed by creditor Bank One (hereafter "Bank One"), and Bank One filed a response. Based on Bank One's proofs of claim, the Chapter 13 trustee (hereafter "Trustee") filed a modification of Debtor's reorganization plan, and Debtor filed an objection.

For the reasons set forth in the accompanying memorandum of decision, Debtor's objection to Bank One's proofs of claim is hereby **OVERRULED**, and Debtor's objection to Trustee's modification is hereby **OVERRULED**.

It is so ordered.

Russ Kendig
United States Bankruptcy Judge

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