In the United States Bankruptcy Court

for the Northern District of Iowa

ELLSWORTH J. PRIMMER TAMMY M. PRIMER *Debtor(s).*	Bankruptcy No. L90-00325C Chapter 7
ELLSWORTH J. PRIMMER TAMMY M. PRIMMER *Plaintiff(s)* vs. UNITED STATES BANK and DIVERSIFIED COLLECTION SERVICES *Defendant(s)*	Adversary No. L90-0036C

ORDER RE: DEBTORS' REQUEST TO REOPEN FILE STATEMENT OF THE CASE

and)

IOWA COLLEGE STUDENT AID)

COMMISSION,)

Intervener.)

ORDER RE: DEBTORS' REQUEST TO REOPEN FILE

STATEMENT OF THE CASE

Debtors filed this Request to Reopen File on October 21, 1994 seeking Court approval to reaffirm Tammy Primmer's discharged student loans. Debtors' Chapter 7 bankruptcy case was closed April 29, 1994. The loans were discharged April 13, 1994, pursuant to the Consent to Discharge of Student Loan Indebtedness filed by Intervenor, Iowa College Student Aid Commission, on April 8, 1994.

Debtors wish to reaffirm the student loan debt for the stated purpose of allowing Tammy Primmer to obtain additional student loans to complete her registered nurse's (RN) training.

CONCLUSIONS

A request to reopen a case filed by a debtor is in fact a two-step process. The first step requires consideration of whether the case should be reopened pursuant to Bankruptcy provisions. If the Court determines that a reopening is appropriate, the Court will then consider the merits of the underlying purpose for which the motion was filed. The reopening of cases is controlled by § 350(b) of the Bankruptcy Code. This Code section states:

> (b) A 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.

Ordinarily, motions to reopen should be liberally granted to accord debtor's relief, "because the case is necessarily reopened to consider the underlying request for relief." In re Dodge, 138 B.R. 602, 605 (Bankr. E.D. Cal. 1992). The statute and most interpretive case law compels the conclusion that ordinarily a case should be reopened as a matter of course as long as the underlying relief sought is contained within the broad parameters of § 350(b). These authorities also imply that cases should be reopened without consideration of the merits of the underlying request, which will ultimately be examined once the case is reopened. However, there remains for judicial inquiry, that category of cases where it is apparent on the face of the request that the resolution is certain and the resolution is adverse to the movant.

The question is, therefore, raised that if the ultimate relief sought is unattainable, may the Court decline to reopen the debtor's case in the first instance based upon principles of judicial economy? This issue was addressed by the 9th Circuit Bankruptcy Appellate Panel in In re Bowen, 102 B.R. 752 (9th Cir. BAP 1989). The Court in Bowen concluded that bankruptcy courts have the authority to deny a request to reopen a case based upon the merits of the underlying request for relief if it is conclusively established that no relief can be afforded to the debtor, even if the case were reopened. If it is established that no relief can be afforded to the debtor, the bankruptcy court may refuse to reopen the case. Bowen, 102 B.R. at 754.

As the relief sought in the present case involves reaffirmation of a discharged obligation, the Court feels, prior to ruling on the Request to Reopen, that an examination of the ultimate potential relief is appropriate. The Court will, therefore, examine the applicable law to determine if relief could be granted to Debtors as sought.

Reaffirmation agreements are governed by 11 U.S.C. § 524(c), which states in part:

> 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, whether or not discharge of such debt is waived, only if-
>
> (1) such agreement was made before the
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> granting of a discharge under section
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> 727 . . .of this title;

Here, Debtors were granted a Chapter 7 discharge April 13, 1994. Debtors' Request to Reopen File in order to request a reaffirmation agreement hearing was filed in October, 1994, more than six months after the case was discharged. A reaffirmation agreement executed after discharge does not comply with the provisions of 11 U.S.C. § 524(c)(1) and cannot be approved by the Court. In re Jackson, 49 B.R. 298, 302 (Bankr. D. Kan. 1985).

Most Courts considering this issue have strictly construed the requirements for reaffirming dischargeable debts. In re Gardner, 57 B.R. 609, 611 (Bankr. D. Me. 1986). The language of § 524(c) mandates strict construction of its requirements because of the potential for coercion from creditors to pressure debtors to enter into undesirable reaffirmation agreements. In re Kienzle, No. 94-20804KD, slip op. at 1 (Bankr. N.D. Iowa Aug. 29, 1994)(citing In re Ellis, 103 B.R. 977, 981 (Bankr. N.D. Ill. 1989)). Nevertheless, a lack of actual creditor coercion is immaterial to this result. Gardner, 57 B.R. at 611. Ultimately, the requirement that reaffirmation agreements be entered prior to discharge ensures that such issues will be resolved and overseen by a judge during administration of the case and during a time that debtor has access to legal counsel. In re Oliver, 99 B.R. 73, 76 (Bankr. W.D. Okla. 1989).

It is the conclusion of this Court that the uncontroverted record establishes that it has no authority under the Bankruptcy Code to enter an order upholding an agreement to reaffirm this debt which has been discharged. In re McQuality, 5 B.R. 302, 303 (Bankr. S.D. Ohio 1980). Because Debtors' reaffirmation agreement was not made in advance of their April 13, 1994 discharge, the agreement cannot approved at a subsequent date. See Gardner, 57 B.R. at 611; Ellis, 103 B.R. at 980.

SUMMARY

The Court may reopen a bankruptcy case for cause with the burden to show good cause on the parties seeking to reopen the case. In re Dodge, 133 B.R. 654, 656 (Bankr. W.D. Mo. 1991). Debtors' good cause for reopening here is based solely upon their desire to obtain Court approval of a reaffirmation agreement which would then presumably allow Debtor Tammy Primmer to obtain additional student loans to complete her training. The Bankruptcy Code allows reaffirmation of debts only in extremely limited circumstances because of the potential for undue pressure to reaffirm from creditors. Gardner, 57 B.R. at 611. The proposed reaffirmation agreement, as defined in the motion, does not comport with § 524(c) and would, therefore, ultimately be denied. The Bankruptcy Court's power to reopen a case should only be exercised "upon a showing that the public interest and the purposes of the Bankruptcy Act will be served by further administration of the estate." Hull v. Powell, 300 F.2d 3, 4 (9th Cir. 1962). As no legitimate purpose of the Bankruptcy Act would be furthered by reopening Debtors' estate in this case, it is the conclusion of this Court that Debtors have failed to establish, under any set of facts presented, that good cause exists for reopening this case and their request to reopen the Chapter 7 estate must be denied.

WHEREFORE, for all the reasons set forth herein, Debtors' Request to Reopen File filed with this Court October 21, 1994 is DENIED.

FURTHER, the Court notes that the Request to Reopen is vague as to whether it was intended that this document be filed in the underlying bankruptcy or in the adversary proceeding which dealt with the dischargeability of these obligations. As the Court is denying the Request to Reopen, the Court feels that it is most appropriate that Debtors' Request to Reopen and the Court's Order denying this Request be placed in both files to avoid any potential confusion.

SO ORDERED this 2nd day of November, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge