



IT IS ORDERED as set forth below:

Date: November 18, 2014

A handwritten signature in black ink, appearing to read "Barbara Ellis-Monro".

**Barbara Ellis-Monro
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

YELENNE G. SERRATO,

Debtor.

CASE NO. 12-66405-BEM

CHAPTER 7

ORDER

This Chapter 7 case came before the Court on September 24, 2014, for a hearing on Debtor's Motion to Vacate Order of Discharge (the "Motion"). [Doc. No. 22]. Gregory Okwuosah appeared on behalf of the Debtor.

Debtor filed her Chapter 7 bankruptcy case on July 1, 2012 and received her discharge on October 10, 2012. After the closing of her case, Debtor sought to reaffirm her home mortgage with her lender, Wells Fargo Bank Home Mortgage ("Wells Fargo"). Wells Fargo informed the Debtor that, in order for Wells Fargo to consent to a reaffirmation agreement, the order reopening her bankruptcy case must state that the discharge has been vacated. Accordingly the Debtor has now sought to vacate the discharge in order to enter into a reaffirmation agreement with Wells Fargo and have it effective.

The Bankruptcy Code does not expressly permit “vacating” a discharge. Revocation of a discharge is permitted under 11 U.S.C. § 727 but only for grounds which do not exist here. Even if this Court has authority to vacate a discharge under Section 105 in certain circumstances, this is not the case for the exercise of the Court’s discretion under Section 105. Debtor’s counsel stated that the Debtor wants to reaffirm the debt with Wells Fargo so that there is a guarantee that title to the property will pass to her when she makes the final payment on the loan secured by the property. A reaffirmation agreement does not aid in the passing of title to the Debtor, it simply makes the Debtor personally liable for any deficiency owed to Wells Fargo should the Debtor not repay the loan in full.

Further, 11 U.S.C. § 524(f) provides that nothing in the Bankruptcy Code “prevents a debtor from voluntarily repaying any debt.” 11 U.S.C. § 524(j) provides that the discharge injunction does not

operate as an injunction against an act by a creditor that is the holder of a secured claim, if –

- 1) such creditor retains a security interest in real property that is the principal residence of the debtor;
- 2) such act is in the ordinary course of business between the creditor and the debtor; and
- 3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of *in rem* relief to enforce the lien.

While neither of these provisions waives the discharge of the debtor’s personal liability for the loan, they certainly permit passage of title of the real property to the Debtor upon fulfillment of the loan obligations. Moreover, a discharge does not prohibit a debtor from entering into a new loan agreement with Wells Fargo or anyone else which includes personal liability. At the hearing, counsel for the Debtor requested fourteen days to brief the issue. There have been no additional pleadings filed. Accordingly, it is

ORDERED that the Motion is DENIED. It is

FURTHER ORDERED that the case shall be closed.

END OF ORDER

Distribution List

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