



IT IS ORDERED as set forth below:

Date: May 4, 2016

**W. Homer Drake
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:	:	CASE NUMBER
	:	
ERIKA ANTOINETTA LEE,	:	15-12628-WHD
_____	:	
	:	
LEANN TOWLER,	:	ADVERSARY PROCEEDING
Plaintiff	:	NO. 16-1004-WHD
	:	
v.	:	
	:	
ERIKA ANTOINETTA LEE,	:	IN PROCEEDINGS UNDER
Defendant.	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE

ORDER

This matter is before the Court on the Notice of Pending Settlement filed by Erika Lee (hereinafter the “Debtor”) in the above-styled adversary proceeding. This matter arises in connection with a complaint objecting to the Debtor’s

discharge and contesting the dischargeability of a debt. This is a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(a) & (b)(2)(I)-(J), 1334. The Debtor has also submitted a proposed order, consented to by LeAnn Towler (hereinafter the “Plaintiff”), that outlines the terms of the parties’ settlement agreement.

The Plaintiff filed her complaint on March 2, 2016, alleging that the Debtor was “in violation” of sections 727(a)(4) and 727(a)(7), which address the Debtor’s entitlement to a discharge, and section 523(a)(2), which addresses the dischargeability of certain debts, of the Bankruptcy Code.¹ The Plaintiff, proceeding *pro se*, that is, without an attorney, alleges that the Debtor owes the Plaintiff \$3,871.44 as the result of the Debtor’s false statements in her lease application and in obtaining services from the city water department. The Debtor did not file an answer, but the parties have reached a settlement. The instant Notice of Pending Settlement was filed on April 1, 2016, and the Debtor uploaded the proposed consent order on April 26, 2016. The Notice indicates that the parties will dismiss the adversary proceeding upon entry of the consent order.

The proposed consent order seeks to resolve the adversary proceeding by providing that the Plaintiff’s claim, reduced to \$3,000, will be declared nondischargeable pursuant to § 523(a)(2). The Debtor will repay the \$3,000 by

¹ 11 U.S.C. § 101 *et seq.*

making monthly payments to the Plaintiff through April 30, 2017. Should the Debtor default on her obligations under this agreement, the amount claimed as nondischargeable will increase to \$3,621.04. The consent order makes no mention of the Plaintiff's allegations concerning § 727. However, the Court cannot enter the consent order at this time because of those allegations.

The settlement of objections to discharge raises public policy concerns, particularly where “dismissal of an objection to discharge is connected with the settlement of some other matter.” *Kaye v. Parker (In re Parker)*, 2003 WL 21703528, at *1 (Bankr. N.D. Ga. 2003) (Bonapfel, J.). The Court finds highly instructive the conclusions reached by Judge Bonapfel in *In re Parker*. There, he has succinctly described the problems with these circumstances:

The courts have identified three potential problems in such situations. First, they note the possibility that the debtor may be tempted to “buy” a discharge from the objecting creditor by agreeing to pay the debt owed to that creditor in exchange for dismissal of the objection to discharge. Related to this is the potential for the objecting creditor to receive, for its own exclusive benefit, a benefit that might be available to creditors generally if the discharge objection were successfully pursued instead of dismissed. Finally, there is the danger that a creditor could use a non-meritorious discharge objection as bargaining leverage to coerce the debtor into paying the creditor's debt, either through reaffirmation or settlement of dischargeability litigation.

Id. at *2.

Despite these public policy concerns, dismissal of § 727 claims is expressly contemplated by the Federal Rules of Bankruptcy Procedure. Rule 7041 states that

“a complaint objecting to the debtor’s discharge shall not be dismissed at the plaintiff’s instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.” FED. R. BANKR. P. 7041. Judge Bonapfel notes that “[m]ost courts appear to permit the dismissal of a creditor’s objection to discharge in connection with a settlement of the dischargeability of the creditor’s debt” where there has been sufficient notice to creditors, the trustee, and the United States trustee. *In re Parker*, 2003 WL 21703528, at *2. Such notice is sufficient where it allows these other parties to intervene and carry on the litigation in place of the plaintiff. *Id.* In order to further distance the objection to discharge from the settlement of the dischargeability suit, Judge Bonapfel adds a further requirement that the objection to discharge be dismissed by a final judgment before approval of the settlement of the dischargeability suit. *Id.* at *3.²

Here, the Plaintiff’s complaint contains allegations under § 727, meaning her suit is partially one objecting to discharge and thus the parties must satisfy the

² In *In re Parker*, Judge Bonapfel dismisses the objection to dischargeability pursuant to Federal Rule of Civil Procedure 54(b), which is applicable to adversary proceedings in bankruptcy through Federal Rule of Bankruptcy Procedure 7054, because the plaintiff had requested dismissal of that claim in addition to approval of the settlement agreement. *See* 2003 WL 210703528, at *3. The Court declines to do the same in this case because no party has expressly requested the dismissal of the Plaintiff’s claims. All that is requested is approval of the settlement agreement.

above requirements in order for their settlement of the dischargeability suit to be approved. Therefore, it is hereby **ORDERED** that:

(1) If the Plaintiff wishes to dismiss her objections to discharge under § 727 in addition to settling her dischargeability claims under § 523(a)(2), she must request such a dismissal from the Court and serve notice of that intention on the Chapter 7 Trustee and the United States Trustee (whose addresses are listed on the attached distribution list) as required by Rule 7041; and

(2) If the Debtor, after dismissal of the § 727 claims becomes final, decides to settle the dischargeability suit, she may submit a renewed request for entry of the parties' consent order.

END OF DOCUMENT

DISTRIBUTION LIST

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