IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

IN RE: DEBORAH RENAE SMITH **NO.: 4:04-bk-24355 E**
Debtors **CHAPTER 7**

ORDER DENYING MOTION TO SET ASIDE ORDER GRANTING DISCHARGE AND DENYING MOTION FOR EXPEDITED HEARING

Now before the Court are the Motion to Set Aside Order Granting Discharge Temporarily to Allow Debtor to Rescind Reaffirmation Agreement ("**Motion to Set Aside Order**"), and the Motion for Expedited Hearing, both filed by Deborah Renae Smith ("**Debtor**") on March 22, 2005, and a Response to the Motion to Set Aside Order, filed by AmeriCredit Financial Services ("**AmeriCredit**") on March 29, 2005.

According to Debtor's Motions, the facts are as follows. Debtor filed her petition under Chapter 7 of the Bankruptcy Code on November 30, 2004, and on January 6, 2005, Debtor filed an executed Reaffirmation and Adequate Protection Agreement with AmeriCredit ("**the Reaffirmation Agreement**"). The Court notes that the docket indicates that the Reaffirmation Agreement was filed on January 10, 2005, not January 6, 2005, as stated in Debtor's Motion to Set Aside Order. The Meeting of Creditors was held on January 13, 2005. On March 15, 2005, the Order Discharging Debtor was entered. However, immediately prior to the entry of the Order Discharging Debtor, Debtor decided that she could not afford to keep a 2001 Dodge Durango, the collateral which was the subject of the reaffirmation agreement. Debtor notified her counsel, who then filed the Motions now before the Court.

In Debtor's Motion to Set Aside, she requests that the Order Discharging Debtor be set aside temporarily so that the Reaffirmation Agreement can be rescinded. Debtor also requests that an

expedited hearing on this matter be held. Debtor alleges that if the Court grants the relief requested, AmeriCredit will not be any worse off than had Debtor rescinded the Reaffirmation Agreement on March 14, 2005.

The Court accepts, as a basis for deciding the issues raised in Debtor's Motions, the facts as Debtor alleges to be true. Thus, there is no need for an expedited hearing on this matter. However, even assuming that the facts in the Motions are true, the Court can not grant the relief requested, for the reasons explained below.

Section 524(c)[1] governs reaffirmation agreements, and states, in part, that such agreements are enforceable, provided certain conditions are met. One condition is that "the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim." § 524(c)(4). "The general rule is that once the time periods provided in Section 524(c) have elapsed, the reaffirmation agreement cannot be disavowed." *In re Lopez*, 292 B.R. 570, 577 (E.D. Mich. 2003) (citing *In re Grabinski*, 150 B.R. 427, 430-31 (Bankr. N.D. Ill. 1993)). Because the time period for rescission is a statutory deadline, "[t]he Court is powerless to provide a remedy after the time lapses." *In re Saunders*, 169 B.R. 192, 195 (Bankr. W.D. Mo. 1994) (citation omitted); *see also In re Ripple*, 242 B.R. 60, 65 (Bankr. M.D. Fla. 1999) (citation omitted) ("The Bankruptcy Code does not provide this Court the authority to set aside a reaffirmation agreement after the time has passed."); *Grabinski*, 150 B.R. at 431 ("The Bankruptcy Code specifically gives debtors 60 days from the date that the agreement is filed with the court or until the date of discharge (whichever is

[1] All references to code sections pertain to the Bankruptcy Code, Title 11, U.S. Code, unless otherwise noted.

later) to rescind these agreements. 11 U.S.C. § 524(c)(4). After that time, debtors are bound by reaffirmation agreements just as they would be bound by any other contract in a non-bankruptcy environment."); *In re McCreless*, 141 B.R. 223, 224 (Bankr. N.D. Fla. 1992) ("Nowhere does the Code give the Court the authority to set aside a reaffirmation agreement after the time for rescission has passed."); *In re Boylan*, No. 94-82155, 1996 WL 33401349, at * 2 (Bkrtcy. C.D. Ill. 1996) ("Once the reaffirmation agreement became enforceable under § 524, this Court has no further authority to set it aside.")

In Debtor's Motion to Set Aside Order, she seeks to have the Order Discharging Debtor temporarily set aside so that she might rescind her Reaffirmation Agreement. Debtor does not allege that the Reaffirmation Agreement was invalid based on any provision of § 524. Rather, Debtor states that she can no longer afford to keep the 2001 Dodge Durango. Debtor cites no legal authority for setting aside the Court's Order Discharging Debtor. Nevertheless, the Court considered whether the Order Discharging Debtor could be set aside under Bankruptcy Rule 9024. This Bankruptcy Rule, applying Federal Rule of Civil Procedure 60, provides, in part, that the Court can relieve a party from a final judgment for certain reasons, including "mistake, inadvertence, surprise, or excusable neglect" or "any of the reason justifying relief from the operation of the judgment."

Based on the facts as stated by Debtor in her Motions, however, none of these reasons is applicable to Debtor's request. Debtor simply states she can no longer afford to retain the 2001 Dodge Durango, not that there was a mistake or error regarding the entry of the Order Discharging Debtor. *Cf. In re Rigal*, 254 B.R. 145, 147 (Bankr. S.D. Tex. 2000) ("There was no mistake or error about the entry of the discharge. The Debtors and [the Creditor] are simply not happy with the results of entry of the discharge."). Thus, in spite of Debtor's allegation that she can no longer

afford to retain the collateral, there is an inadequate factual basis to support Debtor's request to set aside the Order Discharging Debtor. *See In re Curcio*, 242 B.R. 192, 192-93 (Bankr. S.D. Fla. 1999) (denying debtor's motion to reopen Chapter 7 case to determine dischargeability of reaffirmed debt, despite debtor's allegation of changed financial circumstances, since the court lacks the authority set aside the reaffirmation agreement after the statutory time for rescission has passed).

Even if Debtor had alleged additional facts, the case law, as stated above, does not support the rescission of a reaffirmation agreement once the deadline as stated in § 524(c)(4) has passed. Nor does case law support setting aside a discharge order so as to revive a debtor's ability to rescind or enter into a reaffirmation agreement, in light of the overall requirements of § 524(c) and the specific statutory deadline contained in § 524(c)(4). *See Rigal*, 254 B.R. at 148 (reasoning that "these provisions [§§ 524(c) and (d) of the Bankruptcy Code] are meaningless if there is the simple expedient of vacating the discharge order and reentering it to allow a Debtor to enter into a reaffirmation agreement" and noting that a number of courts agree "it is improper to vacate an order of discharge to allow the debtor to enter into a reaffirmation agreement.") (citing *In re Brinkman*, 123 B.R. 611 (Bankr. N.D. Ind. 1991); *In re Leiter*, 109 B.R. 922 (Bankr.N.D. Ind., 1990); *Matter of McQuality*, 5 B.R. 302 (Bankr. S.D. Ohio 1980); *In re Burgett*, 95 B.R. 524 (Bankr.S.D.Ohio 1988); *In re Gruber*, 22 B.R. 768 (Bankr. N.D. Ohio 1982)).

In sum, it is clear that the rescission of the Reaffirmation Agreement is the reason for Debtor's request to set aside the Order Discharging Debtor. However, in light of the facts and the law as stated above, setting aside the Order Discharging Debtor for the purpose of reviving Debtor's ability to rescind the Reaffirmation Agreement would contradict the language and purpose of § 524(c)(4), and this Court declines to do so. Accordingly, it is hereby

ORDERED that Debtor's Motion for Expedited Hearing is **DENIED**. It is further

ORDERED that Debtor's Motion to Set Aside Order Granting Discharge Temporarily to Allow Debtor to Rescind Reaffirmation Agreement is **DENIED**.

IT IS SO ORDERED.

Audrey R Evans

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: March 31, 2005

EOD on 4/1/05 by BG

cc: Keith Grayson, attorney for Debtor
Alice Whitten and Wendy Geurin Smith, attorneys for AmeriCredit
Chapter 7 Trustee
U.S. Trustee