

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
THOMAS BRUCE TEKKER, JR., and	)	CASE NO. 04-33020 HCD
MALENA PATRICE TEKKER,	)	CHAPTER 7
	)	
DEBTORS.	)	
	)	
	)	
THOMAS BRUCE TEKKER, JR.,	)	
	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 04-3106
	)	
RALPH WHITE and JUDITH WHITE,	)	
	)	
DEFENDANTS.	)	

George V. Filippello, Esq., counsel for plaintiff, 305 East Third Street, Mishawaka, Indiana 46544-2025;  
and

John W. Van Laere, Esq., and Joshua R. Payton, Esq., counsel for defendants, Jones, Obenchain, LLP, P.O.  
Box 4577, South Bend, Indiana 46634-4577.

MEMORANDUM OF DECISION

At South Bend, Indiana, on December 10, 2009.

Before the court are two motions filed by the defendants Ralph White and Judith White (“defendants” or “Whites”) against the plaintiff, former chapter 7 debtor Thomas Bruce Tekker, Jr. (“plaintiff” or “Thomas Tekker”): the Defendants’ Motion to Reopen Case and the Defendants’ Motion for Discovery in Aid of Execution. For the reasons that follow, the court denies the two motions.

The chapter 7 bankruptcy case of Thomas Bruce Tekker, Jr., and Malena Patrice Tekker was filed on May 28, 2004. Thomas Tekker then filed a complaint against the Whites on July 26, 2004. The parties, each represented by counsel, agreed that Thomas Tekker owed the defendants \$8,928.00. They stipulated to the amount of the debt, and the plaintiff agreed to pay the defendants \$100.00 a month until the debt was repaid in full. The court, approving the stipulation, issued the Agreed Order and Judgment Determining

Non-Dischargeability of Debt on August 3, 2004; the adversary case was closed on August 11, 2004. The next month, the debtors received their discharge and the bankruptcy case was closed. Now, five years later, the defendants wish to reopen the Tekkers' bankruptcy case to obtain discovery concerning Thomas Tekker's ability to pay the debt. The defendants' Motion for Discovery in Aid of Execution was filed to require Thomas Tekker to appear and answer discovery questions. The Motion stated that there remained an unpaid balance of \$7,338.74 and that Tekker had paid nothing since January 2009.

The reopening of a bankruptcy case is governed by Rule 350(b) of the Bankruptcy Code, which states that the "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." 11 U.S.C. § 350(b). The decision to reopen is left to the broad discretion of the bankruptcy court. See *In re Bianucci*, 4 F.3d 526, 528 (7th Cir. 1993); *Richards v. Stevens*, 310 Fed. Appx. 898 at \*\*1 (7th Cir. Feb. 11, 2009). In this case, there are no assets remaining to be administered in the estate, which was closed five years ago. Nor will a reopening of the bankruptcy accord relief to the debtor. Rather, the defendants want to question Thomas Tekker concerning his present ability to pay the debt owed to them. The stated "cause" is the need for discovery in aid of execution of the judgment issued in the adversary proceeding.

It is clear that Thomas Tekker, with a final judgment against him, was and is obligated to pay the nondischargeable debt he owed to the Whites; his discharge did not negate that obligation. See *In re Lyon*, No. 03-34723, 2009 WL 952095 at \*1 (Bankr. D. Conn. Apr. 7, 2009). The Whites, holding that judgment in their favor and against Tekker, do not challenge the judgment; rather, they seek enforcement of the court's Agreed Order and Judgment of August 3, 2004. The court finds, however, that an enforcement proceeding is not part of the bankruptcy case; it does not involve interpretation of bankruptcy law and its outcome does not affect the bankruptcy estate. See *Richards*, 310 Fed. Appx. 898 at \*\*1 (stating that reopening "would accomplish nothing when a separate judgment exists").

