

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF )  
 )  
MARC S. SOVIK, ) CASE NO. 09-33372 HCD  
 ) CHAPTER 7  
 )  
DEBTOR. )

ORDER

At South Bend, Indiana, on August 26, 2011.

Before the court are the Motion by Debtor to Reopen Bankruptcy Case, filed by chapter 7 debtor Marc S. Sovik (“Sovik” or “debtor”), and the Objection to Debtor’s Motion to Reopen, filed by Ducks Unlimited, Inc. (“DU” or “creditor”).<sup>1</sup> The debtor had filed his voluntary chapter 7 petition on July 16, 2009. After the Trustee filed a no-asset report and the debtor received a discharge, the court closed the case on October 26, 2009. *See* 11 U.S.C. § 350(a). Now, more than eighteen months later, the debtor requests a reopening of his case to amend the bankruptcy schedules, to add the creditor Ducks Unlimited, and to add a newly-found potential asset, one that “stems from a meritorious counterclaim” the debtor filed in a civil lawsuit brought against him by DU in Tennessee. R. 18, ¶ 6.

The creditor, in its Objection to the debtor’s Motion, presented the following background information. On July 28, 2010, DU filed a complaint against Sovik in a Tennessee state court (“state court suit”), seeking damages for conversion, fraud, and breach of fiduciary duty. Sovik responded to that lawsuit and, on January 5, 2011, filed another lawsuit, a collective action under the Federal Labor Standards Act (“FLSA suit”), against DU in a Tennessee federal district court. The cases progressed in each court, and the parties agreed that Sovik’s deposition should be scheduled in both cases on the same day, July 18, 2011.

---

<sup>1</sup> The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

On July 13, 2011, Sovik filed the instant Motion to Reopen his bankruptcy case in this court and a protective order in each Tennessee court. DU claimed that these filings were made to delay his deposition. The creditor objected to the Motion to Reopen because the Motion was untimely, prejudicial to the creditor, and futile. It also argued that a reopening of the bankruptcy proceeding was a waste of this court's judicial resources, since the Tennessee courts were available to entertain the claims.

### DISCUSSION

Section 350(b) of the Bankruptcy Code allows a court to reopen a case "to administer assets, to accord relief to the debtor, or for other cause." The debtor, as the moving party, has the burden of proving one of those grounds. See *In re Redmond*, 380 B.R. 179, 186 (Bankr. N.D. Ill. 2007); *Horizon Aviation of Va., Inc. v. Alexander*, 296 B.R. 380, 382 (E.D. Va. 2003).

A bankruptcy court has broad discretion when determining whether to reopen a bankruptcy case and specifically whether there is "cause" for a reopening. See *Redmond v. Fifth Third Bank*, 624 F.3d 793, 798 (7th Cir. 2010); *In re OORC Leasing, LLC*, 359 B.R. 227, 228 (Bankr. N.D. Ind. 2007). Usually cases are reopened to administer assets, to amend schedules, and to avoid liens. See *In re OORC Leasing*, 359 B.R. at 231. In this case, the reopening is requested to amend schedules and to administer a potential, not actual, asset. When considering a request to reopen, a court may consider such factors as "(1) the length of time that the case has been closed; (2) whether the debtor would be entitled to relief if the case were reopened; and (3) the availability of nonbankruptcy courts, such as state courts, to entertain the claims." *Redmond*, 624 F.3d at 798.

The Seventh Circuit has made clear that "[t]he longer a party waits to file a motion to reopen a closed bankruptcy case, the more compelling the reason to reopen must be." *Id.* at 799. In this case, the debtor filed the motion to reopen one and one-half years after the case was closed, and one year after the creditor had filed a lawsuit against the debtor in a Tennessee state court. The debtor litigated that lawsuit,

without asserting his prior bankruptcy as a defense, and then filed his own lawsuit against the creditor. Not until days before his scheduled deposition did the debtor file a Motion to Reopen the bankruptcy proceedings. The court finds that the filing of this Motion created a delay in the Tennessee lawsuits which was prejudicial to the creditor and probably added further court costs and attorneys' fees to those the creditor already has incurred in the Tennessee proceedings. *See id.* (affirming bankruptcy court's rejection of motion to reopen as untimely, noting that the "timing of the motion strongly suggests that it was a stalling tactic to delay the state-court foreclosure proceeding").

The court also notes that the "newly-found potential asset" the debtor wants to add to his schedules is one which depends upon the debtor's winning a counterclaim in a state court lawsuit or a labor action in a Tennessee federal district court. The debtor did not explain the relationship between this claimed asset and his chapter 7 bankruptcy estate. The court finds, therefore, that this uncertain "potential asset" does not constitute a compelling justification for reopening a long-closed case. In addition, because the debtor knew about the DU lawsuit against him for more than a year, his filing of the motion to reopen now is untimely. *See In re Bianucci*, 4 F.3d 526, 529 (7th Cir. 1993) (affirming bankruptcy court decision not to open case closed two years, noting the "inordinate length of time" and the creditor's legal expenses); *In re Smith*, 68 B.R. 897, 901 (Bankr. N.D. Ill. 1987) (denying motion to reopen, finding that the debtor's two-year delay in seeking to amend his schedules "demonstrated reckless disregard for the accuracy of his schedules, if not intentional delay in failing to schedule" the omitted debt).

The court next considered whether the debtor, whose no-asset case was closed on October 26, 2009, would be entitled to relief if the case were reopened. In his Motion, the debtor asked for permission to amend his schedules to add a potential asset and a previously omitted creditor, DU, and for reinstatement of the automatic stay. As was noted above, he did not describe the pre-petition debtor-creditor relationship he held with DU and did not assert that DU was suing him in the Tennessee state court to collect a pre-petition debt claimed by DU. He did not allege a violation of the discharge injunction. Nor did the debtor

proffer the reason that the debt in question was omitted from the schedules. Nevertheless, “[i]t is now well-established that belated scheduling of an omitted creditor in a no asset case has no effect on whether the debt is discharged.” *In re Davis*, 2009 WL 302221 at \*5 n.5 (Bankr. C.D. Ill. Feb. 5, 2009). Courts are clear that, in no-asset chapter 7 cases, a motion to reopen a closed case to discharge an unsecured debt is unnecessary. *See Judd v. Wolfe*, 78 F.3d 110, 111 (3d Cir. 1996); *In re Beezley*, 994 F.2d 1433, 1434 (9th Cir. 1993) (per curiam); *see also In re Diaz Rodriguez*, 357 B.R. 691, 698 (Bankr. D. P.R. 2006) (citing § 523(a)(3)(A)). In this no-asset case, the debtor received a discharge from all his debts that arose before the date of the order for relief under chapter 7, and the debtor has not asserted that DU holds a debt that might be excepted from discharge based upon specific provisions of the Bankruptcy Code. The debtor failed in his burden of proving that his request to reopen would accord relief to him. *See In re Beezley*, 994 F.2d at 1434 (affirming bankruptcy court’s denial of motion to reopen, concluding that amendment of schedules in a no-asset chapter 7 case was a pointless exercise and that reopening to do so would not accord relief to the debtor).

The creditor, however, in its Objection, asserted that the state court judgment DU might receive against the debtor would be a nondischargeable debt (under § 523(a)(4)) in his bankruptcy, and that any judgment the debtor might win in the FLSA action would amount to only \$500 in damages. According to the creditor, “[t]his is a nominal asset that does not warrant reopening his bankruptcy proceeding in light of the harm and prejudice it would cause to [the creditor].” R. 21 at 5. Because no relief would be accorded to the debtor, argued the creditor, the motion to reopen should be denied.

When considering whether to reopen a bankruptcy case, the court must focus on the cause proffered by the movant for reopening, and not on “the anticipated outcome of the matter that would have been submitted to the court if the case had been reopened.” *In re OORC, Inc.*, 359 B.R. at 229. This court is not adjudicating the dischargeability of an unexplained, unsecured debt Sovik may have owed to DU. It is simply deciding whether to reactivate a case, based on the debtor’s reasons for a reopening.

Having determined that the motion to reopen was untimely, that no relief to the debtor was demonstrated, and that the debtor did not present a compelling justification for reopening a long-closed case, the court further found that no other “cause” was demonstrated. Sovik, the moving party, had the burden of demonstrating that cause. The Seventh Circuit directs that a closed case should not be reopened if “it appears that to do so would be futile and a waste of judicial resources.” *Redmond*, 624 F.3d at 803 (quoting *In re Carberry*, 186 B.R. 401, 402 (Bankr. E.D Va. 1995)). That is the case herein. The court further finds that the claims pending in the two Tennessee courts are nonbankruptcy matters: The creditor seeks damages for conversion, fraud, and breach of fiduciary duty under Tennessee laws in its state court, and the debtor has brought a federal labor lawsuit against the creditor in a Tennessee federal court. It is appropriate that those potential claims be litigated in those courts, not in this court. *See Redmond*, 624 F.3d at 803; *In re Otto*, 311 B.R. 43, 47-48 (Bankr. E.D. Pa. 2004) (approving the debtors’ use of another forum to raise their claim, denying motion to reopen case closed two years).

Accordingly, the Motion by Debtor to Reopen Bankruptcy Case is denied.

SO ORDERED.

/s/ HARRY C. DEES, JR.  
HARRY C. DEES, JR., JUDGE  
UNITED STATES BANKRUPTCY COURT