UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	)	
	)	
ERVIN G. CROWLEY	)	**CHAPTER 7**
MARLENE S. CROWLEY	)	**CASE NUMBER 97-02053/W**
	)	
	)	**ORDER**
DEBTORS	)	

THIS MATTER comes before the Court upon the motion of the Debtors to reopen this Chapter 7 case pursuant 11 U.S.C.§ 350 to file an amendment to his schedules to reflect as an additional asset, a potential claim against Balboa Life Insurance Co (Balboa) and NationsCredit Financial Services Corp. (NationsCredit). Balboa filed the sole objection to the motion. After considering all the evidence, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Debtors filed a Chapter 7 bankruptcy petition on March 7, 1997.
2. Debtors filed an amendment to Paragraph 20 of Schedule B on March 21,1997. This amendment stated as follows: "potential claim against Nationsbank for impropriety during the financing of a residence." The credit life insurance policy that is the basis of the claim against Balboa was part of this financing. The cause of action against Balboa had not been developed as of the date of the amendment or the closing date and therefore, was not expressly stated. However, the trustee was put on inquiry notice of problems relating to the financing and would have had an opportunity to investigate this issue and develop the claim against Balboa.
3. On April 11, 1997 the trustee abandoned all scheduled assets and determined this to be a no asset case.
4. This case was closed on July 1, 1997.

26

5. The debtors engaged Tommy Lydon, Esquire to look into irregularities concerning the loan that they obtained from NationsCredit Financial Services.
6. In the course of this investigation, it was determined that NationsCredit Financial Services Corp and Balboa Life Insurance Company may have overcharged for a insurance premium for a Credit Life Insurance policy purchased in February 1995.
7. The Debtors filed a complaint against NationsCredit Financial Services Corp and Balboa Life Insurance Company in Richland County Court of Common Pleas case number 98-CP-40–3098. Among other allegations, it was alleged that the defendants overcharged for a life insurance premium for a Credit Life Insurance policy purchased in February 1995.
8. On May 6,1999, the defendant, Balboa Life Insurance Company, filed a Motion for Summary Judgment seeking dismissal of that case because the claim was not listed as an asset in the Debtors Chapter 7 Bankruptcy schedules and therefore had not been abandoned or released to the debtors by the Trustee.
9. On July 23,1999, the Debtors Motion to Reopen was filed. The parties apparently agree that the value of the claim, if successful, is between $500.00 to $1,500.00
10. Balboa has filed an objection to the motion to reopen basing its arguments on the following grounds:
    A. Futility and lack of benefit to creditors
    B. Laches

CONCLUSIONS OF LAW

11 USC § 350 of the Bankruptcy Code provides that "[a] 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 Fourth Circuit has determined that the issue of whether to permit a Debtor to reopen a case is a matter that rests upon the sound discretion of the court below, depending upon the circumstances of the case." In re Thompson, 16 F.3d 576 (4th Cir. 1994), *cert. denied,* U.S., 114 S.Ct. 2709. 129 L.Ed. 2d 836 (1994) citing In re Hawkins 727 F.2d 324 (4th Cir. 1984). Based upon the circumstances as stated in the Findings of Fact, it appears that this case should be reopened for several reasons.

Futility and lack of benefit to creditors are legitimate reasons to deny a motion to reopen a case, see In re Gardner, 194 B.R. 576 (Bkrtcy. D.S.C. 1996). Balboa argues that this case should not be reopened because the value of the potential claim is small. 11 USC § 350 however permits a case to be reopened not only to administer assets but also to "accord relief to the debtor, or for other cause".

Prior to the closing of the case there was concern about improprieties connected with the financing of the Debtors residence. The credit life insurance policy that is the basis of the claim against Balboa was part of this financing. The cause of action against Balboa had not been developed as of the date of the amendment or the closing date and therefore, was not expressly stated. However, the trustee was put on inquiry notice of problems relating to the financing and would have had an opportunity to investigate this issue and develop the claim against Balboa.

Except for the amount of money involved, this case is very similar to the case of In re Alphin, Case #96-72207/W (Bankr. D. S.C. November 4, 1997). This Court in Alphin, at page 4, expressly stated that Winn Dixie "is not a creditor or party in interest in the bankruptcy case.....". Balboa and Winn Dixie are in the same position. They are not creditors nor are they parties in interest in the bankruptcy cases. Their only interest in the Bankruptcy Case is to use the failure to list an asset as a shield from liability.

The term "party in interest" is not defined in the Bankruptcy Code. The Court in In re City of Bridgeport 128 B.R.30 (Bkrtcy.D. Conn., 1991) discussed the meaning of the term "party in interest". The Court wrote that the term has "come to mean an entity that has a direct legal interest at issue in the case, rather than an entity that is merely interested in its outcome." Balboa has no direct legal interest at issue in the Bankruptcy case for it had no part to play in that case.

Balboa asserts that the reopening should be barred by laches; that is, the lack of diligence of the Debtors in moving to reopen the cause has caused prejudice to them. This is simply not the case. Balboa did not rely on the debtors' failure to disclose the cause of action in the bankruptcy or the resulting delay in seeking to have the case reopened. The Debtors moved to reopen the case 2 months after the time the failure to list the asset became an issue between the debtors and Balboa.

The debtors have acted in good faith in filing the Motion to Reopen. The conduct of the debtors and their counsel in this case and in the case of In re Malloy, 195 BR 517 (Bkrtcy. M.D. Ga., 1996) are clearly distinguishable. The Court in Malloy was clearly concerned with the fact that the asset was not disclosed prior to the closing of the case despite the fact that counsel for the Debtor obviously knew that it existed well before the case was closed. The court at pg 520 wrote:

> Debtor opted to keep this asset to himself and pursue it after his creditors' legitimate claims to his assets had been discharged. Put succinctly, Debtor had a motive to conceal the asset which is evidence of dishonest behavior. Debtor's attorney informed the Court that he intended to amend the debtor's schedules to reflect the asset, but somehow neglected to do so....
>
> If Debtor is to enjoy some benefit from the Court's favorable consideration of his motion, to the detriment of respondent, ... there has to be a showing of good faith on the part of debtor.

The Court in Malloy was clearly concerned about the lack of good faith on the part debtor. The good faith of the Debtors in this case is manifested by the fact that they amended Schedule B shortly after the case was filed.

By reopening this case, the Chapter 7 trustee will have the opportunity to step into the shoes of the Debtor as the named Plaintiff and take over this litigation or determine that the asset is not worth pursuing and will abandon it. In that event, the claim will revert back to the debtor and the litigation will continue. The end result of Balboa's argument, if successful, is to deny

both the Debtor and the bankrupt estate of the benefit of this asset. Under the circumstances in this case, this would be an unfair and inequitable result.

It appears that the motion should be granted and the case be reopened.

IT IS THEREFORE, ORDERED that

1. The case is reopened;
2. The action proposed in the motion be initiated within fifteen (15) days of the entry of this order;
3. Upon the completion of the proposed action or upon the failure of the movant to initiate timely the proposed action, the Clerk of The Bankruptcy Court (the clerk) shall close this case without further order;
4. The appointment of a trustee by the United States Trustee is necessary to protect the interest of the creditors and the debtor and to ensure the efficient administration of the case;
5. If a meeting of creditors is necessary, the debtor shall, within five (5) business days after the entry of this order, obtain from the Intake Division of the clerk's office the date, time, and location of the rescheduled meeting, give written notice thereof to each party in interest, and file proof of the service of such notice with the clerk.

Columbia, South Carolina
September 17, 1999

United States Bankruptcy Court Judge

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

SEP 22 1999

Sent to all ors via BNC

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

VANNA L. DANIEL

Deputy Clerk