UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 23-02973-HB
Curtis Vance Hoffman,	Chapter 7
Debtor.	**ORDER DENYING MOTION TO REOPEN CHAPTER 7 CASE TO FILE ADVERSARY PROCEEDING SEEKING REVOCATION OF DISCHARGE**

THIS MATTER came before the Court for hearing on September 12, 2024, on the *Motion to Reopen Chapter 7 Case to File an Adversarial Seeking an Order Revoking the Discharge* ("Motion") pursuant to 11 U.S.C. § 350(b) filed by Creditor Stacie Hoffman.[1] An Objection was filed by Debtor Curtis Vance Hoffman on August 30, 2024,[2] and Creditor filed a Response on September 8, 2024.[3] Both Debtor's counsel, Robert A. Pohl, and Creditor's counsel, Robert H. Cooper, appeared at the hearing. The Court heard testimony from Debtor, who was a credible witness, explained the events of his bankruptcy case, and responded to cross-examination. Creditor seeks to reopen this case to file an adversary action against Debtor to revoke his discharge pursuant to 11 U.S.C. § 727(d).

This Chapter 7 case was filed on September 30, 2023. There is no dispute that Creditor was given due notice of the filing and all applicable deadlines. Fed. R. Bankr. P. 4004(a) provides that in a Chapter 7 case, a complaint objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 4004(b) allows a party in interest to file a motion requesting an extension of time to object to discharge. John K. Fort,

[1] ECF No. 28, filed Aug. 12, 2024.
[2] ECF No. 30.
[3] ECF No. 31.

Chapter 7 Trustee, investigated Debtor's assets and notified creditors on December 11, 2023, that assets may be available for distribution and claims should be filed. Debtor consented to the Chapter 7 Trustee's request for an extension of time to object to discharge under § 727, and the deadline for the Trustee expired on February 29, 2024, without the filing of a complaint. No other party requested an extension. No objections to discharge (11 U.S.C. § 727) were filed, and the Court granted Debtor a discharge on March 1, 2024.

Creditor filed a proof of claim on March 24, 2024, for $277,015.15 designated by Creditor as domestic support obligations, resulting from litigation in Florida state courts. It appears that Creditor was and is represented by Florida counsel in those matters, and based on Debtor's testimony, it appears that litigation is ongoing.[4]

On April 25, 2024, Creditor's counsel filed a notice of appearance. On June 4, 2024, the Trustee abandoned all assets without a distribution to creditors, the case was closed, and the Trustee discharged on June 5, 2024.

Debtor testified that with the discharge, he has put these bankruptcy matters behind him and moved on. Obviously, if this case is reopened, Debtor will incur additional expense and delay.

Creditor's Motion to Reopen was filed on August 13, 2024. Creditor did not appear at the hearing to give good reason for her delay in filing the Motion, and Creditor's counsel explained only that the Motion followed Creditor's retention of bankruptcy counsel.

Bankruptcy Rule 5010 provides, in relevant part, "[a] case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code." Fed. R. Bankr. P. 5010. Section 350 provides "[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

[4] *See* 11 U.S.C. § 523(a)(5) and (15), which except certain obligations from discharge.

Fourth Circuit has indicated that '[t]he right to reopen a case depends upon the circumstances of the individual case and that the decision whether to reopen is committed to the court's broad discretion." *In re Boyd*, 618 B.R. 133, 165 (Bankr. D.S.C. 2020) (quoting *Hawkins v. Landmark Fin. Co. (In re Hawkins)*, 727 F.2d 324, 326 (4th Cir. 1984)). "Although the Court has discretion in reopening a case for cause, the burden of establishing that cause exists is on the party seeking reopening." *In re Rollison*, 579 B.R. 67, 71 (Bankr. W.D. Va. 2018) (citing *In re Hardy*, 209 B.R. 371, 374 (Bankr. E.D. Va. 1997)).

> The movant need not prove his case in the motion to reopen, and the court should avoid ruling on the merits of the underlying matter…. But as granting a motion to reopen does not afford the movant relief, it follows that should the movant's objective be unachievable and thus futile, the court should not reopen the case.

In re Kennedy, No. 08-81687, 2016 WL 6649200, at *2 (Bankr. M.D.N.C. Apr. 6, 2016) (citations omitted). "Among the factors that courts consider when making a determination under § 350(b) are the delay between the closing of the case and the motion to reopen as well as the prejudice that it would cause to [the] nonmovant." *In re Hall*, No. 04-09478-JW, 2008 Bankr. LEXIS 2689 (Bankr. D.S.C. July 24, 2008) (quoting *In re Midlands Util., Inc.*, 251 B.R. 296, 299 (Bankr. D.S.C. 2000)).

Creditor's purpose for reopening is to allow the filing of a complaint pursuant to 11 U.S.C. § 727(d). Revocation of discharge is a harsh measure, which runs contrary to the general policy of the Bankruptcy Code giving Chapter 7 debtors a fresh start. *Id*. (citing *In re Kaliana*, 202 B.R. 600 (Bankr. N.D. Ill. 1996)). Section 727(d) provides:

> **(d)** On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—
>
> > **(1)** such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

> **(2)** the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;
>
> **(3)** the debtor committed an act specified in subsection (a)(6) of this section; or
>
> **(4)** the debtor has failed to explain satisfactorily—
> **(A)** a material misstatement in an audit referred to in section 586(f) of title 28; or
> **(B)** a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.

11 U.S.C. § 727(d). Creditor relies on § 727(d)(1), (2), and 4(B).

Section 727(d)(2) requires both that the Debtor acquired or became entitled to acquire property that would be property of the estate, and "that the Debtor knowingly intended to defraud the trustee, or engaged in such reckless behavior as to justify the finding of fraud; mere failure to report by the debtor is not sufficient". *Vieira v. Lents (In re Lents)*, 650 B.R. 238, 244 (Bankr. D.S.C. 2023) (quoting *In re Fisher*, Nos. 02-52442, 06-6077, 2008 Bankr. LEXIS 39 (Bankr. M.D.N.C. Jan. 7, 2008)). Additionally, "Fourth Circuit courts have held that § 727(d) is to be construed strictly against any objector and liberally in favor of the debtor". *In re Vereen*, 219 B.R. 691, 694 (Bankr. D.S.C. 1997) (citing *In re Lyons*, 23 B.R. 123 (Bankr. E.D. Va. 1982); *In re Howard*, 55 B.R. 580 (Bankr. E.D.N.C. 1985)). There is no credible allegation before the Court that Debtor either acquired or became entitled to acquire property that would be property of the estate without reporting such acquisition or entitlement to the Trustee. The Trustee investigated Debtor's assets and found nothing available for distribution. At the hearing, Creditor's counsel questioned Debtor regarding paintings sold on Facebook marketplace. However, Debtor

adequately explained that the paintings were property of his non-filing spouse, there was nothing produced to the contrary, and Creditor did not attend the hearing to offer additional information. Creditor has failed to show sufficient evidence from which the Court could find that relief is achievable under § 727(d)(2), and thus it appears reopening the case to seek such relief would be futile.

Regarding § 727(d)(4)(B), Creditor was not able to articulate how Debtor's alleged conduct may align with "a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28." Section 727(d)(4)(B) imposes on individual debtors a duty to cooperate with an auditor when their case has been randomly selected for audit pursuant to 28 U.S.C. § 586(f)(1). The case docket does not indicate that this case was selected for audit under 28 U.S.C. § 586(f)(1), and accordingly there are no grounds to find this provision applicable to grant Creditor's Motion.

That leaves 11 U.S.C. § 727(d)(1), which requires the objecting party to "show due diligence in investigating and responding to possible fraudulent conduct once he or she is aware of it or is in possession of facts such that a reasonable person in his or her position should have been aware of a possible fraud." *In re Vereen*, 219 B.R. 691, 696 (Bankr. D.S.C. 1997). This standard is consistent with the goal of Chapter 7 to grant debtors a fresh start. *Id.* Creditor did not show any relevant events that occurred subsequent to the applicable deadlines or the granting of Debtor's discharge to support the Motion and any claims under § 727(d)(1), but rather argued that past events or facts were uncovered by Creditor's bankruptcy counsel once he was employed. The case docket indicates that the Trustee completed his work of investigating prior to applicable deadlines, did not report fraud, did not find assets for distribution, and did not elect to object to

Debtor's discharge after requesting additional time to do so. After considering Creditor's allegations, Debtor's testimony, the lack of explanation from Creditor for the delay in action, and the contents of the case docket, the Court cannot find that Creditor did not know, or could not have become aware, of any alleged fraud until after the granting of a discharge.

Creditor failed to show cause for the delay between the deadline for objecting to discharge, the granting of the discharge, the closing of the case, and the filing of the Motion, and no allegations against Debtor adequately support relief under § 727(d). Creditor has failed to meet the burden necessary for relief pursuant to § 350(b), as reopening the case would be futile and would only result in further cost and delay. For the foregoing reasons, the Motion to Reopen pursuant to § 350(b) is denied.

AND IT IS SO ORDERED.

FILED BY THE COURT
09/18/2024

Entered: 09/18/2024

Chief US Bankruptcy Judge
District of South Carolina