

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

ENTERED
JUN 6 2001
K.R.W.

IN RE:

Neal Free

C/A No. 98-01527-W

JUDGMENT

Chapter 7

FILED
0'clock & min
JUN 6 2001
BRENDA K. ARDRE, CLERK
United States Bankruptcy Court
Columbia, South Carolina 29201

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Neal Free's Motion to Reopen the Chapter 7 case is granted. In accordance with Fed. R. Bankr. P. 5010, it is determined that the appointment of a Chapter 7 Trustee by the United States Trustee is necessary to protect the interest of creditors and Debtor and to ensure the efficient administration of the case. If a meeting of creditors is necessary, the Clerk's office will schedule and give notice thereof to each party in interest. Debtor shall also file Amended Schedules and Statements of Affairs in the Chapter 7 case within fifteen (15) days of this Order. Lastly, the Trustee shall have fifteen (15) days after the first regularly-scheduled §341 Meeting, or if none is necessary, fifteen (15) days from the filing of the Amended Schedules and Statements of Affairs to object to any exemption claimed by Debtor in any assets added by Debtor in his amended Schedules and Statements of Affairs, and shall likewise have fifteen (15) days after the first regularly-scheduled §341 Meeting, or if none is necessary, fifteen (15) days from the filing of the Amended Schedules and Statements of Affairs, to object to Debtor's Discharge under §727.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
June 6, 2001.

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:

FILED 6/11/2011
JUN 6 2011

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

Karen R. Weathers
KAREN R. WEATHERS
Deputy Clerk

*Maya / Debra
Arnold by
Michael by
John / Lisa
Chen
Cane / Cane*

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FILED

at _____ o'clock & _____ min.

JUN 6 2001

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina

IN RE:

Neal Free

C/A No. 98-01527-W

ORDER

Chapter 7

ENTERED
JUN 6 2001
K.R.W.

THIS MATTER comes before the Court upon the Motion to Reopen Case (the "Motion") filed by Neal Free ('Debtor') on April 30, 2001. In the Motion, Debtor seeks to reopen his Chapter 7 case pursuant to 11 U.S.C. §350¹ to file an amendment to his Schedules to reflect an additional asset, more specifically, a bodily injury claim against Bondo/Mar-Hyde Corporation, U.S. Can, and possibly others, and to exempt the same. Bondo/Mar-Hyde Corporation and U.S. Can (hereinafter "Objectors"), filed the sole objection to the Motion. After considering the pleadings in this matter and the arguments of counsel at the hearing on the Motion, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P. 52, made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 7052.²

FINDINGS OF FACT

1. Debtor was allegedly injured when a paint can failed, causing the contents of the can to spray into his face and eyes in June of 1997.
2. On February 23, 1998, Debtor filed for relief under Chapter 7 of the Bankruptcy Code.

¹ Further references to the Bankruptcy Code shall be by section number only.

² The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such; and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

Debtor's Schedules reflect \$37,230.00 in secured claims, no priority debt, and \$34,022.44 of unsecured non-priority claims. Furthermore, the Schedules disclose household goods of \$2,800.00, wearing apparel of \$500.00, jewelry in the amount of \$10.00, and a half interest in a 1996 Dodge truck worth \$21,000.00. Debtor disclosed in his Schedules and Statement that he is disabled and that he receives \$900.00 a month in social security benefits; however, he made no mention of any cause of action or contingent claim against any party, either as property of the estate or as exempt bodily injury claim.

3. On March 27, 1998, Robert Anderson, the Chapter 7 Trustee, declared the case to be a no-asset case. Subsequently, on June 26, 1998, Debtor received his discharge, and the case was closed.

4. In February 2000, Debtor filed a personal injury lawsuit against Bondo/Mar-Hyde corporation in the United States District Court for South Carolina, Aiken Division. U.S. Can was later added as a third-party defendant. A Motion for Summary Judgment was filed in that case by the Objectors on April 10, 2001, in which they asserted a judicial estoppel defense to the lawsuit, based upon Debtor's failure to list the cause of action against Objectors in his bankruptcy Schedules and Statements.

5. On April 30, 22001, Debtor filed the Motion presently before the Court, to add the claim against the Objectors as an asset of the estate. At the hearing on the Motion, Debtor testified that he had a seventh grade education and that, at the time the petition was filed, he did not know or had not understood that the claim against the Objectors was a type of asset that needed to be included in his Schedules and Statements.

6. On May 15, 2001, the Objectors filed a Memorandum of Law in Opposition to Debtor's

Motion to Reopen Case and based their objection on several grounds. First, they argued that the creditors would not benefit from the reopening of Debtor's case and further asserted that the reopening of the case would disrupt the orderly administration of justice. Second, the Objectors argued that Debtor's failure to disclose the asset was not inadvertent, but rather intentional. Lastly, they argued that denial of the Motion would be consistent with the principle behind the doctrine of judicial estoppel.

CONCLUSIONS OF LAW

Section 350(b) 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." The decision of whether a case should be reopened is within the sound discretion of the court and is usually analyzed on a case-by-case basis. See, e.g. In re Allphin, C/A No. 96-72207-W (Bankr. D.S.C. 11/04/1997) (quoting In re Thompson, 16 F.3d 576 (4th Cir. 1994), cert. denied, 114 S.Ct. 2709 (1994)). After considering the factual situation presented in this case, the Court finds that this case should be reopened.

This case is very similar to the cases of In re Allphin and In re Crowley which were argued before and decided by this Court. In re Allphin, C/A No. 96-72207-W (Bankr. D.S.C. 11/4/1997); In re Crowley, C/A No. 97-02053-W (Bankr. D.S.C. 9/22/1999). In In re Allphin, Mr. Allphin was allegedly injured on a grocery store's premises and became disabled. Approximately three months after sustaining the injuries, Mr. Allphin filed a joint Chapter 7 with his wife. His schedules did not reflect any cause of action or contingent claim against the grocery store, and the case was declared a no-asset case; subsequent to which the debtors received their

discharge and the case was closed. Several months after the case had been closed, Mr. Allphin filed a personal injury lawsuit against the grocery store. As in this case, the grocery store filed a motion for summary judgment, asserting a judicial estoppel defense on the personal injury lawsuit, based upon Mr. Allphin's failure to disclose the cause of action in his schedules and statements. The debtor then filed a motion to reopen his Chapter 7 case to add the asset. The Court granted the debtor's Motion to Reopen for several reasons.

First, the Court noted that the grocery store was not a creditor or party in interest in the Chapter 7 case and thus had no standing to object to the debtor's Motion. Id.; see also In re Crowley, C/A No. 97-02053-W (Bankr. D.S.C. 9/22/1999) (finding that the party objecting to the Motion to Reopen was not a creditor or party in interest in the bankruptcy case and noting that "[t]he term 'party in interest' is not defined in the Bankruptcy Code. The Court in In re City of Bridgeport, 128 B.R. 30 (Bankr. D. Conn. 1991) discussed the meaning of the term 'party in interest.' The Court wrote that the terms 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."). Similarly, in the present case, Objectors are in the same position as the grocery store and Balboa in the In re Allphin and In re Crowley case respectfully and thus have no legitimate standing in this matter.

Second, in In re Allphin the Court noted that "[w]hile futility and lack of benefit to creditors are legitimate reasons to deny a motion to reopen a case, such are not certain in the instant case." Id. (citing In re Gardner, 194 B.R. 576 (Bankr. D.S.C. 1996)). Just like in that case, the present case was declared a no-asset case by the Chapter 7 Trustee, but upon reopening,

the Trustee will be in charge of managing the cause of action which may be substantial. Furthermore, the lawsuit pending in the District Court has alleged a cause of action seeking punitive damages, which may not be exempt and, while Debtor has indicated that the asset will be claimed as exempt pursuant to S.C. Code §15-41-30(11)(b),³ the allowance of the exemption is not certain in that the Chapter 7 Trustee and the creditors will have a thirty-day period to review any claim of exemption to determine if it is objectionable. See, e.g. Fed. R. Bankr. P. 4003.⁴ Additionally, “upon reopening, the Chapter 7 Trustee, creditors or the United States Trustee would have the right to investigate whether the original failure to list this asset was intentional or an act which could lead to the revocation of the Debtor’s discharge.” In re Allphin, C/A No. 96-72207-W (Bankr. D.S.C. 11/4/1997).

As already stated, this case presents an almost identical factual situation to the two cases of In re Allphin and In re Crowley previously decided by this Court, in which the Court granted the debtors’ motion to reopen the case to add an asset. After applying the same factors outlined in the two cases to the facts presently before this Court, the Court concludes that the reopening is not futile or a waste of resources and further that such appears to be in the best interest of the estate. It is therefore,

³ That section of the South Carolina Code Annotated provides in pertinent part that a debtor should be allowed an exemption for his or her right to receive: “a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent.”

⁴ Furthermore, at the hearing on the Motion, Debtor stated that he would be willing to use an unspecified portion of the proceeds recovered from the lawsuit to pay his creditors, despite his discharge.

ORDERED that Debtor's Motion to Reopen the Chapter 7 case is granted.⁵ In accordance with Fed. R. Bankr. P. 5010, it is determined that the appointment of a Chapter 7 Trustee by the United States Trustee is necessary to protect the interest of creditors and Debtor and to ensure the efficient administration of the case.

IT IS FURTHER ORDERED THAT if a meeting of creditors is necessary, the Clerk's office will schedule and give notice thereof to each party in interest.

IT IS FURTHER ORDERED that Debtor shall also file Amended Schedules and Statements of Affairs in the Chapter 7 case within fifteen (15) days of this Order. The Trustee shall have fifteen (15) days after the first regularly-scheduled §341 Meeting, or if none is necessary, fifteen (15) days from the filing of the Amended Schedules and Statements of Affairs to object to any exemption claimed by Debtor in any assets added by Debtor in his amended Schedules and Statements of Affairs, and shall likewise have fifteen (15) days after the first regularly-scheduled §341 Meeting, or if none is necessary, fifteen (15) days from the filing of the Amended Schedules and Statements of Affairs, to object to Debtor's Discharge under §727.

AND IT IS SO ORDERED.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
June 6, 2001.

⁵ The Court notes that Debtor has already paid his filing fee.

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:

6/6
JUN 6 2001

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KAREN R. WEATHERS

Deputy Clerk

Plaque / P. H. C.
Handwritten by
Michael L. Lee