IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

IN RE: JOSEPH D. CORN, Debtor **No. 5:17-bk-70468**
Ch. 7

ORDER DENYING MOTION TO REOPEN

Before the Court is the debtor's *Motion to Reopen Case* that was filed on August 14, 2018. The purpose given for reopening the case was "to add a pre-petition, general unsecured creditor that was inadvertently omitted from the Debtor's schedule F." The Court respectfully denies the debtor's motion without prejudice because the motion as filed is "legally irrelevant," as explained below.

The statute relating to the debtor's motion to reopen is 11 U.S.C. § 350(b): "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 to reopen a case is within the discretion of the bankruptcy court based on "the particular circumstances and equities of each particular case." *Apex Oil Co., Inc. v. Sparks* (*In re Apex Oil Co.*), 406 F.3d 538, 542 (8th Cir. 2005). Reopening a case "presents a limited range of issues, including whether further administration of the estate appears to be warranted." *Id*. Further administration could include, for instance, a motion to avoid a late-discovered lien not otherwise avoidable under non-bankruptcy law or the court's determination of whether repayment of a student loan presents an undue hardship on the debtor under § 523(a)(8). However, reopening a case to add an omitted creditor would serve no purpose if the debt is non-dischargeable as a matter of law. *See, e.g., In re Hunter*, 283 B.R. 353, 356 (Bankr. M.D. Fla. 2002).

Section 727(b) of the bankruptcy code states, in part: "*Except as provided in section 523 of this title*, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter . . . ." 11 U.S.C. § 727(b) (emphasis added). But for § 523, the debtor's omission of the creditor he now seeks to add would be of no consequence. However, § 523(a)(3) states that a discharge

under § 727 does not discharge an individual debtor from any debt–

> (3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—
>
> > (A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
> >
> > (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request[.]

11 U.S.C. § 523(a)(3). This provision protects creditors who did not receive notice of the debtor's filing because they were not properly scheduled. *In re Everly*, 346 B.R. 791, 796 (B.A.P. 8th Cir. 2006).

Subsection (A) deals with debts that are not in the category of the intentional tort claims listed under § 523(a)(2), (4), or (6). In the case of a "no-asset" case, the fundamental right to file a claim in the debtor's case and participate in the distribution of assets never occurs. The *Notice of Chapter 7 Bankruptcy Case* that is issued in a chapter 7 case states in the title that there is no proof of claim deadline; further, on the second page the notice requests that a creditor not file a proof of claim unless it receives a notice to do so. Because there is no deadline established within which a creditor can "timely fil[e] a proof of claim," § 523(a)(3)(A) is not applicable. In other words, "'there can never be a time when it is too late 'to permit timely filing of a proof of claim.'" *In re Beezley*, 994 F.2d 1433, 1436 (9th Cir. 1993) (quoting *In re Mendiola*, 99 B.R. 864, 867 (Bankr. N.D. Ill. 1989)). The dischargeability of a § 523(a)(3)(A) debt is not affected by the debtor's failure to list the debt. Reopening a case simply to schedule that creditor is "for all practical purposes a useless gesture." *Id*. at 1437 (and cases cited).

Section 523(a)(3)(B), on the other hand, "excepts intentional tort debts from discharge

notwithstanding the creditor's failure to file a timely complaint under section 523(c) if the creditor did not know about the case in time to file such a complaint." *Id.* at 1436. If the omitted creditor holds a claim based on one of the enumerated exceptions to discharge under § 523(a)(2), (4), or (6), according to § 523(a)(3)(B), that creditor's debt is not discharged. The requirement of the creditor to file a complaint within 60 days of the date first set for the debtor's § 341 meeting is no longer applicable. 11 U.S.C. § 523(c); Fed. R. Bankr. P. 4007(c). Reopening the case to schedule the debt does not extend the time the creditor has to file a complaint: "Either the creditor had actual, timely notice of the [case] or he didn't. Amending the schedules will not change that." *In re Beezley*, 994 at 1437 (quoting *In re Mendiola*, 99 B.R. at 868).

For these reasons, the Court denies the debtor's motion to reopen his case to schedule the omitted creditor. However, the Court is denying the debtor's motion without prejudice to allow the debtor to file another motion to reopen his case for the purpose of filing an adversary proceeding to determine the dischargeability of the omitted creditor's debt or any other appropriate reason, if he wishes.

IT IS SO ORDERED.

Ben Barry
United States Bankruptcy Judge
Dated: 08/30/2018

cc: Todd Hertzberg
Joseph D. Corn
Jill R. Jacoway, chapter 7 trustee
UST