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LAW CURRENTS An informational newsletter from
Richard A. Klass, Esq.

"Don't look back unless it's a good view."

— Tupac Shakur

More than 20 years ago, the debtor filed for bankruptcy, specifically, a "no asset" Chapter 7 case.[1] The Debtor listed all of his debts in his schedules and received a discharge.



Pre-petition Personal Injury Claim

Unbeknownst to the Debtor at the time, allegedly, a person was injured at the premises of property owned by the debtor back in 2003. The injured person filed a lawsuit in New York State Supreme Court against the Debtor one month before the Debtor filed for bankruptcy in 2005; however, the Debtor was not personally served with the Summons and Complaint.

In the state court action, a motion for a default judgment was made by service by mail upon the Debtor at two addresses, neither of which were his, and he continued to be unaware of the action. Subsequently, judgment was entered against the Debtor in the amount of $140,000; however, the personal injury lawyer never served notice of the judgment on the Debtor.

Income Execution served by the Sheriff

For 19 years, the default judgment remained dormant until the injured plaintiff's attorney sought to enforce it through the issuance of an income execution. The Debtor was served by the Nassau County Sheriff with an income execution, alleging that, with accrued interest, the balance due on the

[1] Typically, people who file for bankruptcy do not have many assets. In a "no asset" case, the debtor gets to keep all of the assets listed in his schedules because those assets are exempt from creditors; essentially, once the debtor has claimed exemptions for each of his listed assets, there is nothing left for a bankruptcy trustee to distribute to creditors.

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judgment now exceeded over $400,000. Further, the Sheriff was now seeking to garnish the Debtor's wages.

The Debtor retained, **Richard A. Klass, Esq.,** *Your Court Street Lawyer,* to advise him on the proper course of dealing with the judgment, as he wanted to avoid filing for bankruptcy again.

Reopening a Closed Case

There are different circumstances under which a closed bankruptcy case may be reopened. Bankruptcy Code Section 350(b) 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." In this situation, the basis for seeking to reopen the Debtor's long-closed case was for the limited purpose of amending the schedules to add the inadvertently omitted creditor, namely: the injured plaintiff.

It was urged that "cause" exists to reopen the no asset Chapter 7 case under 11 U.S.C. § 350(b) because reopening can still afford meaningful relief to the Debtor. See *In re Jensen,* 46 BR 578, 581 [Bankr EDNY 1985] ("The debtor seeks to reopen this no-asset case to amend his schedules in order to include Joy DeMartini as a creditor. An amendment to a schedule to include an additional creditor and, thus, accurately reflect all debts owed, constitutes sufficient cause to reopen a case. *In re Jordan,* 21 B.R. 318 (Bkrtcy.E.D.N.Y.1982). The debtor may reopen his case and amend his schedules to list this debt."); see also, *In re Candelaria*, 121 BR 140 [EDNY 1990].

In *In re Candelaria*, 121 BR 140, 142 [EDNY 1990], the court held that, in a no asset Chapter 7 case, reopening to add an omitted creditor is generally appropriate where the omission was an honest mistake and the debt is not rendered nondischargeable merely because the creditor was not originally scheduled; the creditor may still raise any genuine nondischargeability issue after reopening:

> Preliminarily, the court notes that a desire to amend "a schedule to include an additional creditor and, thus, accurately reflect all debts owed," generally "constitutes sufficient cause to reopen" a no asset bankruptcy case. *See In re Jensen,* 46 B.R. 578, 581 (Bankr.E.D.N.Y.1985); *accord In re Daniels,* 51 B.R. 142, 143 (Bankr.S.D.Ohio 1985) ("A classic cause for invoking the cure of reopening is to add an omitted creditor to the schedules."). This is because "[t]he Bankruptcy Code places a premium on scheduling all creditors...." *In re Godley,* 62 B.R. 258, 261–62 n. 1 (Bankr.E.D.Va.1986). In the vast majority of cases, a debtor's motion to reopen is prompted, of course, by his desire to discharge the omitted debt. Absent some harm or prejudice to the omitted creditor, this motive is cited approvingly by bankruptcy courts, since it will accord relief to the debtor. *See, e.g., Matter of Davidson,* 36 B.R. 539, 543 (Bankr.D.N.J.1983).
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> Thus, numerous courts have held that motions to reopen no asset cases to list omitted creditors should be liberally granted unless: (1) the omission was the result of fraud, recklessness or intentional design on the part of the debtor, or (2) reopening would prejudice the creditor in two protected areas, *i.e.,* its right to participate in a dividend and its right to obtain a determination of dischargeability. *See Matter of Baitcher,* 781 F.2d 1529, 1534 (11th Cir.1986); *In re Rosinski,* 759 F.2d 539, 541 (6th Cir.1985); *Matter of Stark,* 717 F.2d 322, 323 (7th Cir.1983) (per curiam); *In re DeMare,* 74 B.R. 604, 605 (Bankr.N.D.N.Y.1987); *In re Maddox,* 62 B.R. 510, 514 (Bankr.E.D.N.Y.1986); *In re Godley,* 62 B.R. at 261; *In re Tinnenberg,* 57 B.R. 430, 432 (Bankr.E.D.N.Y.1985); *In re Daniels,* 51 B.R. at 143; *Matter of Zablocki,* 36 B.R. 779, 783 (Bankr.D.Conn.1984); *Matter of Davidson,* 36 B.R. at 543.

Here, the Debtor was unaware of this creditor and did not list the particular creditor in his schedules. The alleged claim was not one of a nondischargeable nature. Further, there would have been no recovery since this was a no asset case. This creditor would not be prejudiced by the reopening of this case; on the flip side, Debtor will be severely prejudiced and harmed by the case not being reopened to schedule this creditor, the claim and judgment.

Judge Grants Motion to Reopen the Closed Case from 20 Years Ago

Despite the passage of more than twenty years since the bankruptcy case was closed, the judge granted the motion to reopen the case so the particular personal injury claim could be included in the petition; the claim arose pre-petition and had the Debtor known about it at the time, the personal injury claim would have been listed in his schedules. Accordingly, the Debtor was now able to amend his schedules to include this creditor and discharge the judgment, which, with accrued interest, now exceeded in excess of $400,000.

—Richard A. Klass, Esq.

Richard A. Klass, Esq., maintains a law firm engaged in civil litigation at 16 Court Street, 28th Floor, Brooklyn, New York. He may be reached at (718) COURT●ST or RichKlass@courtstreetlaw.com with any questions. Prior results do not guarantee a similar outcome.

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