

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**

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**In re:**  
**DEBORAH RUGGLES,**  
**Debtor.**

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**Chapter 7 Case  
# 91-10624**

*Appearances:*            *Kevin Purcell, Esq.*  
                                 *Office of the United States Trustee*  
                                 *Albany, NY*  
                                 *For the United States Trustee*

*Jennifer Emens-Butler, Esq.*  
*Obuchowski & Emens-Butler*  
*Bethel, Vt.*  
*For the Defendant*

**MEMORANDUM OF DECISION**  
**DENYING THE UNITED STATES TRUSTEE'S MOTION TO REOPEN CASE**

The United States Trustee for the District of Vermont (the "UST") has filed a motion to reopen the chapter 7 case of Deborah Ruggles' (the "Debtor") (doc. # 8). The UST asserts that cause exists to reopen the case and appoint a case trustee to administer an asset that was disclosed in the Debtor's petition because it is now evident that the asset had greater value than the Debtor listed. The Debtor objects to the reopening of her 1991 case arguing that the UST's motion is procedurally defective, that the Debtor claimed the subject asset as exempt, that the chapter 7 trustee (the "Trustee") did not object to that exemption, that the Trustee abandoned this asset, and that the delay in seeking this relief mitigates against reopening the case (doc. # 10).

The Court finds the UST has not shown cause to reopen, the Debtor's arguments are compelling and, for the reasons more specifically articulated below, denies the UST's motion to reopen this case.

**JURISDICTION**

The Court has jurisdiction over this adversary proceeding and the U.S. Trustee's motion to reopen the case under 28 U.S.C. § 157(b)(2)(A).

**BACKGROUND FACTS**

The salient facts are not in dispute. The Debtor filed a petition for Chapter 7 relief on August 8, 1991 (doc. # 1). In her schedules, the Debtor listed as an asset an "Insurance and disability benefit from Transamerica/Occidnet-" (the "Transamerica Contract") and valued it at \$10,000. The Transamerica Contract is a structured settlement the Debtor received to compensate her for a personal injury suffered in 1985 (doc. # 10, ¶ 5). The Debtor's injury caused severe head trauma resulting in the loss of half of her brain (doc. # 10, Ex. A ¶ 3). The Debtor has undergone repeated surgeries, suffers severe to minor diminished mental capacity, and has been unable to work since the date of the accident (*Id.*). At the time of the bankruptcy filing, the Debtor was caring for her minor child who is blind and autistic (*Id.* at ¶ 4).

The Debtor listed the Transamerica Contract as fully exempt under “12/2740-19F” as “a payment for personal injury reasonably necessary for the support of the debtor and dependents of the debtor,” on her Schedule C (doc. # 10, ¶ 2). On Debtor’s Schedule I, she indicated that the \$1,250 per month payments she received under the Transamerica Contract was her only source of income. Under the terms of the Transamerica Contract the Debtor was to receive \$1,250 per month initially, and the monthly payments were to increase by \$250, every 5 years (doc. # 11, at 2). The Debtor was also guaranteed lump sum payments every 5 to 10 years with the final payment due in 2027 (*Id.*). The Trustee did not object to the Debtor’s claimed exemption to the Transamerica Contract during the pendency of the case, the Trustee filed a no asset report (doc. # 4), and the case was closed, in due course, on January 13, 1992.

In late 2005, it came to the UST’s attention that the Debtor had entered into a contract to sell three of her guaranteed lump sum payments worth \$60,000 for the discounted price of \$15,000 (doc # 12). This apparently prompted the UST to investigate whether to reopen the case. At the hearing held on January 24, 2006, the UST asserted that the Debtor had received over \$400,000 under the Transamerica Contract, and thus the value of the contract on the date of the petition was in fact significantly greater than the \$10,000 value the Debtor listed on her schedules. The UST argues that this discrepancy between the listed value and the actual value of the asset is cause to reopen the case and give the Trustee an opportunity to sell the asset for the benefit of the Debtor’s creditors (doc # 8, ¶ 3).

Neither the UST, the Trustee, counsel for the Debtor nor the Debtor were able to produce any of the files relating to the Debtor’s 1991 case, due to the passage of nearly 15 years since the closing of the case (doc. # 10, ¶¶ 7,8,9,10). Moreover, neither the Trustee nor counsel for the Debtor has any recollection of what investigation was conducted, or what computation was utilized, to determine the discounted present value of the Transamerica Contract in 1991 or its exempt status (doc. # 10, ¶¶ 7, 8).

### DISCUSSION

The pertinent statute, 11 U.S.C. § 350(b), 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.” Federal Rule of Bankruptcy Procedure 5010 allows a case to be reopened “on motion of the debtor or other party in interest ...” “[T]he decision to reopen or not is discretionary with the court, which may consider numerous factors including equitable concerns, and ought to emphasize substance over technical considerations.” Critical Care Support Services, Inc. v. United States of American (In re Critical Care Support Services, Inc.), 236 B.R. 137, 140 (E.D. N.Y. 1999), citing Batstone v. Emmerling (In re Emmerling), 223 B.R. 860, 864 (2d Cir. BAP 1997); see also Mendelsohn v. Ozer, 241 B.R. 503, 506 (E.D. N.Y. 1997) (motion to reopen is within sound discretion of bankruptcy courts); Figlio v. American Management Services, Inc., 193 B.R. 420, 424 (Bankr. D.N.J. 1996) (decision to reopen a case is within broad discretion of the bankruptcy court).

The Bankruptcy Code does not place an express limitation upon the time within which a motion to reopen a case must be filed, and Federal Rule of Bankruptcy Procedure 9024(1) excludes motions to reopen from the one year time limitation prescribed by Federal Rule Civil Procedure 60. Nevertheless, the doctrine of laches may be raised as a defense to the reopening of a case. The doctrine of laches is defined as “[t]he equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought.” Black's Law Dictionary 891 (8th ed. 2005). Thus, “[t]he longer the period between the closing and reopening, the more cause must be shown to warrant a reopening.” Figlio, 193 B.R. at 425; Reid v. Richardson, 304 F.2d 351, 355 (4th Cir.1962). The Court finds 15 years to fit within the laches doctrine.

Under § 350(b) and Bankruptcy Rule 5010, the discovery of previously undisclosed or unadministered assets has long constituted cause to reopen a bankruptcy case. See Miller v. Shallowford Community Hospital, 767 F.2d 1556, 1559 n.4 (11<sup>th</sup> Cir. 1985); In re Menk, 241 B.R. 896, 911 (9<sup>th</sup> Cir. BAP 1999). The burden is on the UST to present evidence that demonstrates that the Trustee was not aware of the Transamerica Contract before the case was closed. This Court would not hesitate to reopen a case to enable a case trustee to administer a newly discovered or previously concealed asset, particularly if the moving party demonstrated that the debtor retained such asset through fraud, deceit or other wrongdoing. However, the Court finds no cause to reopen a case where the debtor fully disclosed the asset to the trustee, the record indicates that the trustee administered the case in ordinary course and there is no evidence of any fraud. The UST here seeks reopening solely on the basis that the asset's value appears to have been greater than the trustee originally computed, and does so after well more than a decade has passed and there is not a scintilla of evidence that the debtor acted with fraudulent intent. See 3 L. King, Collier on Bankruptcy, ¶ 350.03[1] (15<sup>th</sup> ed. 2005); In re Adair, 253 B.R. 85, 88 (9<sup>th</sup> Cir. BAP 2000); In re Alcorn, 252 B.R. 174, 178 (Bankr. D.Co. 2000). A chapter 7 trustee owes a fiduciary duty to both the debtors and creditors to fully investigate the financial affairs of the debtor and to close the bankruptcy proceeding as expeditiously as possible. 11 U.S.C. §§ 704(1), (4). When the Debtor filed her 1991 petition, the Trustee had the opportunity to fully investigate her assets, debts and financial affairs. The record indicates that she fully and properly listed the Transamerica Contract. At this point in time no one seems entirely clear on how the Debtor arrived at her computation of the asset's value (doc. # 10, Exhibit B), but it is clear that the Trustee had an opportunity to investigate the asset and the exemption and took no steps to administer the asset or object to the exemption. The Trustee has stated that under his “ordinary practices and standard of care as trustee, [he] would have inquired about all of the Debtor's assets and closed the case only after a thorough review of the same” (Id). There is no evidence of error by the Trustee or Debtor. Most importantly, there is no evidence that this is either a previously undisclosed asset or a situation where the Debtor intentionally undervalued the asset in her schedules.

Moreover, this asset has been abandoned by the estate. After the Trustee conducted the meeting of creditors he filed his report of No Distribution, the case was closed and by operation of law, pursuant to 11 U.S.C. § 554(c), the Transamerica Contract was abandoned. That statute provides that properly scheduled assets that are not administered are deemed abandoned at the time the case is closed. Once the property has been abandoned it reverts back to the debtor and he or she has the right to assert title to such property. The fact that the Debtor may not have contacted the Trustee after the case was closed to inform him of changes in the value of the Contract does not justify reopening a case after such a change is discovered. 3 L. King, Collier on Bankruptcy, ¶ 350.03[1] (15<sup>th</sup> ed. 2005). Furthermore, the general rule is that the abandonment of a fully disclosed asset at the close of a bankruptcy case is generally irrevocable. Alcorn, 252 B.R. at 178; In re Devore, 223 B.R. 193 (9<sup>th</sup> Cir. 1998); In re Nebel, 175 B.R. 306 (Bankr. D. Neb. 1994); In re Enriquez, 22 B.R. 934 (Bankr. D. Neb. 1982); In re Killebrew, 888 F.2d 1516 (5<sup>th</sup> Cir. 1989). An exception exists in the event a debtor committed fraud or concealed information from the trustee, in which event the abandonment may be revoked. In re Webb, 54 F.2d 1065 (4<sup>th</sup> Cir. 1932); Matter of Lintz West Side Lumber, 655 F.2d 786 (7<sup>th</sup> Cir. 1981). However, there is no proof of concealment here. “The mere mistake in valuation of an asset has been uniformly rejected as a basis to revoke an abandonment.” Figlio, 193 B.R. at 423.

The Trustee was charged with investigating the validity of the Debtor’s exemptions. The exemption in question is weighed by reference to the needs of the particular debtor for the support of the debtor and her family. As noted above, the Debtor here suffered from serious physical impairments medical conditions and was raising a severely disabled child. She had what by any measure would be categorized as extraordinary needs. The Court has no evidence before it that suggests the Trustee did not exercise his discretion in this regard in a sound and thorough fashion. Hence, this Court finds that there is no reason to believe that the Transamerica Contract was not properly evaluated by the Trustee, in the context of the Debtor’s unique and rather tragic circumstances, before he closed this case.

#### CONCLUSION

The Court finds that the U.S. Trustee has not set forth cause to reopen this case and specifically has not demonstrated that the Debtor intentionally undervalued the Transamerica Contract. Based upon the record in this case, there is no basis for disturbing the finality of the order closing the case. The Court therefore denies the U.S. Trustee’s Motion to Reopen.

This constitutes the Court’s findings of facts and conclusions of law.

March 29, 2006  
Rutland, Vermont

  
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Colleen A. Brown  
United States Bankruptcy Judge