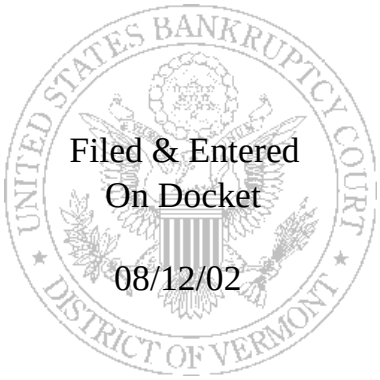
Not for Publication

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

BRUCE D. TAYLOR, **Case # 99-10728**
Debtor **Chapter 7**

Appearance: *David R. Edwards, Esq.*
Burlington, VT
Counsel for Debtor



MEMORANDUM OF DECISION
DENYING DEBTOR'S MOTION TO REOPEN CASE

Based upon the facts of this case, the motion of the Debtor and applicable case law, the Court denies the debtor's Motion to Reopen Case [doc. #8-1]. This written decision is issued to elucidate the rationale for the Court's ruling.

BACKGROUND

The debtor filed for chapter 7 bankruptcy relief on May 19, 1999. As the debtor had no non-exempt assets, a No-Asset Notice was issued to the debtor's creditors on May 21, 1999 [doc. #2-1]. Pursuant to Fed. R. Bankr. P. Rule 2002(e), the notice directed creditors not to file proofs of claim unless later notified to do so. The § 341 meeting of creditors was held on June 18, 1999, and the case trustee filed a Report of No Assets on July 6, 1999 [doc. #3-1]. On August 8, 1999, the Court issued an Order discharging the debtor [doc. #6-1]. A final decree was issued on August 30, 1999 [doc. #7-1], and the case was closed on the same day. Over two years later, on October 17, 2001, the debtor filed a Motion to Reopen Case seeking to add a previously omitted creditor [doc. #8-1], presumably to insure that his liability to that unscheduled creditor was discharged.

DISCUSSION

Section 350(b) grants the bankruptcy court the authority to reopen a closed bankruptcy case. Moreover, "[i]t is clear that the decision of whether to reopen a case is in the discretion of the Bankruptcy Court." American Credit Services, Inc. v. Tucker, 143 B.R. 330, 333 (Bankr. W.D.N.Y. 1992) [citing In re Maddox, 62 B.R. 510, 512 (Bankr. E.D.N.Y. 1986)]. Using its discretionary authority, this Court has made several bench rulings denying debtors' motions to reopen cases. In making those rulings, the Court has relied on the rationale of Tucker. Persuaded by its thorough analysis, the Court takes this opportunity to formally adopt the Tucker holding and rationale.

In Tucker the issue was whether an unscheduled creditor's claim was excepted from discharge under § 523(a)(3)(A) when:

(1) it was a no-asset chapter 7 case;

(2) where creditors were given No-Asset Notice[1]; and

(3) the debtor was seeking to add the unscheduled creditor's claim to the debtor's schedules *after* the debtor was discharged and the case was closed.

See id. at 331. The bankruptcy court ruled the claim was dischargeable under these circumstances. See id. at 333. Importantly, the Tucker court instructed:

> The plain language of § 523(a)(3)(A) and the holding of this Court in this case indicate that if there is a closed no-assert case where a No-Asset Notice has been utilized, so that no bar date has been set and the time to file proofs of claim has not expired, all that is required for the claim of an unscheduled creditor to be discharged is that: (1) the creditor receive notice or actual knowledge of the case so that it can timely file a proof of claim; and (2) there has been no intentional or reckless failure to schedule the creditor, fraudulent scheme, intentional laches or prejudice to the creditor. The determination of whether any of these limiting equitable circumstances exist is, however, not properly addressed by either the act of reopening a case or adding a creditor . . . .

Id. at 334.

[1] i.e., notice to creditors pursuant to Fed. R. Bankr. P. Rule 2002(e), directing creditors not to file claims unless later notified to do so.

It is well known that § 521 requires, *inter alia*, that a debtor file a complete list of his or her creditors and a complete and accurate schedule of all liabilities. 11 U.S.C. § 521(1); see also, Tucker 143 B.R. at 332. Failing to do so can lead to: (1) denial of the debtor's overall discharge under § 727; or (2) excepting of the unlisted debts from the debtor's discharge under § 523. See id. However, the exception to discharge under § 523(a)(3) will not be imposed *if the creditor had notice or actual knowledge of the case in time to exercise its rights* to file a proof of claim and to share in any dividend. See id. at 332-33; see also, § 523(a)(3)(A); Powers v. Crum (In re Crum), 48 B.R. 486, 491 (Bankr. N.D. Ill. 1985) (in the absence of certain equitable circumstances,[2] the plain language of § 523(a)(3)(A) indicates that the only rights of unscheduled creditors to be protected are the ability to file a proof of claim and to share in any dividend).

Thus, given the language of § 523(a)(3)(A) – specifically the phrase "unless such creditor had notice or actual knowledge of the case in time for such timely filing"– where a debtor has filed a chapter 7 no-asset case and No-Asset Notice has been sent, reopening the case after it has been closed to add a previously omitted creditor to ensure dischargeability of that unscheduled creditor's claim is not necessary. See Tucker, 143 B.R. at 334 n.8. ("[W]here there has been no claims bar date set, whenever an unscheduled creditor holding an otherwise dischargeable claim receives notice of the bankruptcy case, that claim is discharged" (citation omitted)). Moreover, in addition to being unnecessary, requiring the reopening of such a case to add a previously unscheduled unsecured creditor in such circumstances would impose a significant "administrative burden on the Court and the bankruptcy system . . . ." Id. at 334.

In this case: (1) the debtor filed a chapter 7 no-asset case; (2) the Clerk's Office issued No-Asset Notice, meaning no bar date has been set and the time to file proofs of claim has not expired; and (3) there is no indiction of any intentional or reckless failure to schedule a creditor, fraudulent scheme, intentional laches or prejudice to a

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[2] Through the development of case law, these equitable circumstances have been deemed to be: (1) intentional or reckless failure to list a creditor; (2) failure to list a creditor as part of a fraudulent scheme; (3) prejudice to a creditor from the failure to schedule; and (4) intentional laches. See Tucker, 143 B.R. at 333 (footnotes omitted).

creditor. Hence, the debtor need only provide the unscheduled creditor with notice or actual knowledge of his case so that the unscheduled creditor can timely file proof of claim. If the debtor provides the creditor with notice of the bankruptcy filing or verifies that the creditor has knowledge of the bankruptcy case, the debtor will be discharged from the claim of the unscheduled creditor. Thus, there is no reason for the Court to reopen Debtor's case.

CONCLUSION

The claim of the debtor's previously omitted creditor is discharged once notice or actual knowledge is provided to that creditor since: (1) as far as the Court is aware, there has been no intentional or reckless failure to schedule the creditor, fraudulent scheme, intentional laches or prejudice to the creditor; and (2) the debtor's Chapter 7 bankruptcy case was a no-asset case where a No-Asset Notice was utilized so that no bar date has been set and the time to file proofs of claim has not expired. Thus, there is no need to reopen the debtor's case so he can amend his schedules to include the previously omitted creditor to ensure the discharge of that creditor's claim. Therefore, the debtor's Motion to Reopen Case is denied.

August 9, 2002
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge