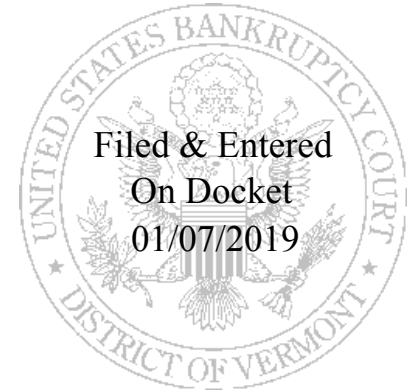


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Carolyn & Lee Blackmer,
Debtors.**

**Chapter 7
Case # 05-11653**

ORDER
DENYING U.S. TRUSTEE'S MOTION TO REOPEN CASE

On December 13, 2018, the U.S. trustee filed a motion asking the Court to reopen this chapter 7 case, which was closed approximately thirteen years ago, so the case trustee could administer a previously undisclosed personal injury claim recovery, based on a defective medical device (doc. # 9, the "Motion"). The U.S. trustee (the "Movant") argues that, because the defective device was implanted in Carolyn Blackmer (the "Debtor") several months prior to the date she filed the joint-petition in this case, the settlement funds are an asset of the bankruptcy estate, and can be administered by a re-appointed chapter 7 trustee for the benefit of creditors. Neither the Debtor nor the former chapter 7 trustee filed a response to the Motion. The Court held a hearing on the Motion on January 4, 2019.¹

While a case can be reopened "on the motion of the debtor or other party in interest[.]" see Fed. R. Bankr. P. 5010, the permissive language of § 350(b) "provides the Court with broad discretion to determine whether a party ... has demonstrated good cause" to warrant such reopening. In re Vasquez, 581 B.R. 59, 65 (Bankr. D. Vt. 2018) (quoting In re Ross, 548 B.R. 632, 636 (Bankr. E.D.N.Y. 2016)). Though the Movant noticed his Motion using the default procedure, the Court conducted a hearing to address whether sufficient cause existed to reopen the case. At that hearing, Rebecca Rice, Esq., appeared on behalf of the Debtor and Lisa Penpraze, Esq., appeared in her capacity as Assistant U.S. Trustee, on behalf of the Movant.

¹ The Court enters this Order to memorialize the bench ruling it announced at the hearing held on January 4, 2019.


The Movant filed the Motion to reopen the case based on his position the Debtor's defective device settlement proceeds are an asset of the bankruptcy estate. This Motion appears to raise the same issues this Court addressed last year in In re Vasquez, 581 B.R. 59, 65 (Bankr. D. Vt. 2018). In that case, the chapter 7 trustee filed a motion to reopen a long-closed case, also based on a personal injury recovery arising from a defective device claim, and the Court found it was necessary to resolve the issue of whether the subject proceeds were an asset of the bankruptcy estate, i.e., whether a case trustee was entitled to administer them, prior to determining whether to reopen the case. Id. at 66. "If the Court finds the settlement funds are not property of the estate, then there is no purpose in reopening the case," as it "cannot afford the moving party the requested relief." Id. (internal citation omitted).

At the January 4th hearing, the Debtor's attorney stated she did not oppose reopening the case because she did not expect any creditors would file proofs of claim and hence there would ultimately be no financial cost to her client if the case were reopened, and, by contrast, if she opposed the Motion, there could be significant legal fees. Although the Debtor signaled her willingness to consent to a finding that the subject recovery was an estate asset, the Movant advised that he was not able to state definitively, nor provide the required evidence demonstrating, the settlement funds at issue are property of the estate. The Court offered the Movant the opportunity to continue the hearing so he could determine what discovery was needed and whether an evidentiary hearing was warranted.² The Movant declined that opportunity and instead requested the Court issue an order denying the Motion.

In light of the Movant's request, and for the reasons stated on the record at the hearing held on January 4, 2019, THE COURT FINDS the U.S. trustee has failed to establish the Debtor's settlement proceeds are property of her bankruptcy estate. THE COURT FURTHER FINDS that, since this was the sole basis of the Motion, the Movant has not established cause to reopen this chapter 7 case.

Therefore, IT IS HEREBY ORDERED that the U.S. trustee's motion to reopen is DENIED, without prejudice to the Movant's right to renew the motion.

January 7, 2019
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge

² The Court explained that, as occurred in Vasquez, the U.S. trustee or a case trustee who asks the Court to reopen a case to administer previously undisclosed settlement proceeds may conduct discovery and schedule an evidentiary hearing to present documentary and testimonial evidence necessary to establish the proceeds at issue are an asset of the bankruptcy estate, and thus demonstrate there is cause to reopen the case. See In re Vasquez, 581 B.R. 59 (Bankr. D. Vt. 2018).