

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**Gary Lee King,
Debtor.**

**Chapter 7 Case
97-10966**

Appearances: *Rebecca Rice, Esq.*
 Rutland, VT
 Attorney for Debtor

Virginia Hurley f/k/a Virginia King
Appearing Pro Se
As Creditor

ORDER GRANTING DEBTOR'S MOTION TO REOPEN CASE

On January 28, 2003, Gary Lee King (hereafter referred to as "the Debtor") filed a Motion to Reopen this chapter 7 case in order to obtain a determination as to whether the Debtor's obligations to his ex-wife under the Final Order of divorce were discharged in his bankruptcy case. Although no one filed an objection to the relief sought in the Motion, the Debtor's ex-wife, Virginia Hurley f/k/a Virginia King (hereafter referred to as "the Creditor") appeared at the March 18, 2003 hearing and voiced her opposition to the Debtor's Motion to Reopen, alleging that her debt was not discharged in this case because she was not a creditor at the time the case was filed. For the reasons set forth below, the Court grants the Debtor's motion.

Based upon the papers filed in this matter, the Court's records and the arguments presented at the hearing, the Court finds the following material facts to be undisputed:

1. Prior to the parties' divorce, the Debtor and the Creditor jointly owned a mobile home on which they were jointly liable for the mortgage debt (hereafter referred to as Mobile Home #1 mortgage); and, the lien securing the mortgage on Mobile Home #1 was in both parties' names.
2. On October 23, 1995, a Final Order of divorce was entered in the matter of Virginia M. King v. Gary L. King, No. 363-12-94 (Vt., Ben. Fam. Ct. Oct. 23, 1995), which provided, *inter alia*, that the Debtor would: (a) have sole and exclusive title, use and possession of the mobile home; (b) be responsible for all expenses related to the mobile home, including the mortgage payments; and (c) defend and indemnify the Creditor with regard to the Mobile Home #1 mortgage obligation. See paragraph 5 of Final Order.

3. Subsequent to the divorce, the Creditor moved back in with the Debtor and was residing with him through the time he filed for bankruptcy relief.
4. Prior to the date the Debtor filed the instant bankruptcy case, the Creditor purchased a newer mobile home in her own name, in which the Debtor had no ownership and on which the Debtor had no liability. Thereafter, Mobile Home #1 was disassembled.
5. On July 1, 1997 the Debtor filed the instant chapter 7 case. He did not list the Creditor on Schedule H as a co-debtor on the Mobile Home #1 mortgage, nor on Schedules E or F as a creditor in connection with any spousal maintenance, child support or indemnification obligations. However, the Debtor's obligation on the Mobile Home #1 mortgage was listed on Schedule F.
6. The Creditor did not file a complaint under either 11 U.S.C. §§ 523(a)(5) or 523(a)(15) seeking relief, or otherwise appear in the instant bankruptcy case.
7. The Debtor's chapter 7 case was closed as a no-asset case, and a discharge order was entered on November 19, 1997. After entry of the Order of Discharge, the Debtor and the Creditor separated again.
8. Subsequent to the entry of the Order of Discharge, the mortgage creditor holding Mobile Home #1 mortgage sued the Creditor, obtained a judgment against her, and garnished her wages for approximately 3 years, collecting \$8,682 from her.
9. The Creditor brought several actions in Vermont Family Court to collect the \$8,862 garnished from her wages in connection with Mobile Home #1 mortgage on which the Debtor was to indemnify the Creditor pursuant to the Final Order. For example, in February 2002, the Debtor was found in wilful contempt for his failure to pay this sum to the Creditor; in October 2002, a hearing was held to determine what sanctions should be imposed on the Debtor based upon his failure to pay this sum; and, in January 2003, an enforcement order was entered directing the Debtor to pay \$730 by February 25, 2003 and to make \$500 per month payments until the full sum of \$8,682 is paid.
10. In January 2002, the Creditor filed a petition for chapter 7 bankruptcy relief (case # 02-10074).

The key material fact in dispute is whether the Creditor had actual knowledge of the Debtor's bankruptcy case.

Pursuant to 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." Based upon the above-referenced undisputed facts, the Court finds there is cause to reopen the case in order to make a determination as to whether the Debtor's obligations to the Creditor under the Final Order of divorce were discharged in his bankruptcy case. See In re Varrone, 269 B.R. 475 (Bankr. D. Conn 2001).

Therefore, IT IS HEREBY ORDERED that:

- A. the chapter 7 case is reopened;
- B. the automatic stay imposed by 11 U.S.C. § 362(a) is reinstated; and
- C. there is no need to appoint a trustee at this time.

_____The Court is cognizant of the sensitivity and urgency of the issues raised in the Family Court action and recognizes the harm that could be perpetrated by delay in that proceeding. Therefore, IT IS FURTHER ORDERED that this case shall be closed on April 21, 2003 if the Debtor has not commenced an action to determine the dischargeability of his obligations to Virginia Hurley f/k/a Virginia King by that date.

SO ORDERED.

March 24, 2003
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge