UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

SANDRA HENDERSON DIXON, CASE NO. 00-10258-WSS

Debtor. Chapter 7

ORDER ON MOTIONS TO REOPEN CHAPTER 7 CASE

This matter came before the Court on the Debtor's motion to reopen her Chapter 7 case; the Trustee's motion to reopen the Debtor's Chapter 7 case; the response of the Bankruptcy Administrator to the Debtor's motion to reopen; the Debtor's motion to set aside discharge and convert to a Chapter 13 case; the objection of The Franklin Life Insurance Company (hereinafter "Franklin Life") to the motions to reopen of the Debtor and the Trustee, and the objection of Albert Cooksey (hereinafter "Cooksey") to the motions to reopen of the Debtor and the Trustee. Arthur Clarke appeared for Sandra Henderson Dixon; Jeffrey Hartley and John Leach appeared for Franklin Life, and Anne Sumblin appeared for Cooksey. After due consideration of the pleadings, briefs submitted by the parties, evidence and testimony, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Debtor, Sandra Henderson Dixon (hereinafter "Dixon"), filed a Chapter 7 petition[1] on January 13, 1998. On January 16, 1998, Dixon filed an action in state court against Franklin Life and Cooksey, Franklin Life's agent, alleging fraud. In her state court lawsuit, Dixon alleges that she discovered the fraud in September 1997. Dixon did not list her claim against Franklin Life in her bankruptcy schedules or the statement of affairs. At the first meeting of creditors on March 2,

[1]Case Number 98-10115.

1998, Dixon responded as follows when asked about lawsuits: "Have you been involved in any lawsuits?" Debtor: "Uh, garnishments, yes." She did not disclose that she had a claim or a lawsuit filed against Franklin Life and Cooksey. She received her discharge for her Chapter 7 case on April 28, 1998.

In August 1998, Franklin Life and Cooksey had the state court action removed to federal district court. Franklin Life filed a motion for summary judgment in the action based on Dixon's lack of standing and judicial estoppel. The federal district court remanded the action to the state court in November 1998. Dixon filed an affidavit in response to Franklin's motion for summary judgment, stating that she was not familiar with bankruptcy law and was not aware that she was required to list the state court action in her bankruptcy schedules. Dixon filed a motion in the bankruptcy court to re-open her Chapter 7 case, to amend the schedules and to convert the case to a Chapter 13 proceeding on February 10, 1999. The bankruptcy court granted Dixon's motion to re-open on March 3, 1999, and her motion to convert her proceeding to Chapter 13 on March 24, 1999. The court also set aside her discharge in the Chapter 7 proceeding on April 14, 1999.[2]

Dixon filed a separate Chapter 13 petition on April 8, 1999, Case number 99-11271. The bankruptcy court dismissed the Chapter 13 case with a sixty day injunction for failure to make payments on November 23, 1999. On December 27, 1999, Dixon filed a motion to reduce the injunction period. The bankruptcy court reduced Dixon's injunction period on January 12, 2000.

The state court held a second hearing on Franklin's motion for summary judgment, and granted Franklin's motion for summary judgment on January 10, 2000. On January 18, 2000, Albert Cooksey filed a motion for summary judgment in the state court case. The state court judge later vacated the summary judgment for Franklin on February 11, 2000.

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[2]The Chapter 7 case (Case Number 98-10115) was subsequently dismissed on April 14, 1999.

Dixon filed a Chapter 7 petition on January 21, 2000. Dixon's petition again failed to include the state court lawsuit. Counsel for the Debtor stated at the hearing on this matter that he did not include the lawsuit in the Debtor's schedules because the state court had granted Franklin Life's motion for summary judgment. At the first meeting of creditors held on February 28, 2000, Dixon was again asked "Have you been involved in any lawsuits?", and she answered "No". The Trustee filed a final report of no distribution in the Chapter 7 case. Dixon received a discharge from this court on May 3, 2000 and the case was closed on the same date.

Franklin Life and Cooksey each filed a second motion for summary judgment in the state court action in June 2000. Dixon filed a motion to re-open her Chapter 7 case in this court, seeking to amend her schedules and statement of affairs to include the state court action.

CONCLUSIONS OF LAW

Section 350(b) of the Bankruptcy Code 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." 11 U.S.C. § 350(b). The section gives the bankruptcy judge wide latitude to decide whether to reopen closed cases. Indeed, appellate courts review decisions under §350(b) for an abuse of discretion. In re Rosinski, 759 F.2d 539, 540 (6th Cir. 1985). Courts have freely allowed debtors to reopen their cases to amend schedules or add creditors absent any indication of abuse or fraud. See In re Baitcher, 781 F.2d 1529, 1533 (11th Cir. 1986). "[A] debtor 'may be prevented from amending her schedule only if her failure to include the creditor on the original schedule can be shown to have prejudiced him in some way or to have been part of a scheme of fraud or intentional design.'" Bittel v. Yamato Int'l Corp., 1995 WL 699672 (6th Cir. 1995), quoting In re Rosinski, 759 F.2d 539, 541 (6th Cir. 1985).

In deciding whether to reopen a case under §350(b), the court should consider the benefit

to the debtor, the prejudice to other parties, and the benefit to creditors. In re Koch, 229 B.R. 78, 86 (Bankr. E.D. N.Y. 1999); In re Maloy, 195 B.R. 517, 518 (Bankr. M.D. Ga. 1996). The benefit to the Debtor is significant. If allowed to reopen her case, the Debtor can defeat the pending motions for summary judgment of Franklin Life and Cooksey. Franklin Life and Cooksey would continue to be prejudiced by the reopening of the Debtor's case. Both parties have already suffered additional delay and expense in defending their positions in this court. Finally, the benefit to the Debtor's creditors is uncertain. When the Debtor first returned to the bankruptcy court to reopen her Chapter 7 case, she testified in an affidavit to the state court that she intended to pay her creditors first. She made the same representation to the bankruptcy court in her motion to reopen, stating that her creditors would be paid "in full." However, the Debtor filed a 100% Chapter 13 plan and later amended it to reduce the percentage paid unsecured creditors to 60%. It is apparent from the facts that the Debtor is the only party to benefit from reopening her case.

The facts of the present case clearly indicate that the Debtor sought to manipulate the bankruptcy code and its provisions. The Debtor received the benefit of holding her creditors at bay while concealing a potentially valuable asset not once but twice. It is conceivable that the Debtor did not understand that her lawsuit was an asset which she was required to report to the court. She may have misunderstood at her initial first meeting of creditors that she was expected to reveal all lawsuits in which she was involved as either a plaintiff or a defendant. Such matters are common knowledge to courts and attorneys, but are often lost on those who are unaccustomed to dealing in the legal field.

However, in this case the Debtor had an opportunity to correct her mistake. She undoubtedly became aware of the importance of listing the lawsuit as an asset when Franklin Life

filed its first summary judgment in the state court action, yet she again failed to list the lawsuit in her schedules when she filed the Chapter 7 petition in January 2000. Her attorney explained that he believed that the lawsuit was over due to the summary judgment in favor of Franklin Life on January 10, 2000. However, the Debtor knew that the summary judgment had been vacated when she testified at her second first meeting of creditors on February 28, 2000, two weeks after the state court vacated the summary judgment. When asked "Have you been involved in any lawsuits?", the Debtor stated unequivocally "No". At the first meeting of creditors for her 1998 Chapter 7 case, the Debtor hesitated before answering the same question: "Have you been involved in any lawsuits?" The Debtor answered: "Uh, garnishments, yes." Two years later, with knowledge of the complications caused by failing to list the lawsuit in her first Chapter 7 case, the Debtor answered "No" without hesitation. The answer indicates a clear intention to conceal the existence of the state court action. Her actions can only be found to be intentional, fraudulent, and deceptive. Based on the foregoing, the Court finds that the Debtor's motion to reopen her Chapter 7 case should be denied, and that her motion to set aside her discharge and convert to Chapter 13 case should be denied. In light of the Debtor's past actions, she cannot now be trusted to look after the interests of her creditors over the life of a Chapter 13 plan.

The Trustee has also filed a motion to reopen the Debtor's Chapter 7 case. The Court finds that the Trustee has had an opportunity to administer this particular asset in the Debtor's previous Chapter 7 case. As Cooksey points out, the same individual was the Trustee for both of the Debtor's Chapter 7 cases, and therefore, should be charged with knowledge of the state court lawsuit since the Debtor's motion to reopen her first Chapter 7 case in 1999. Yet the Trustee took no action to administer the state court action as an asset of the estate. The Court finds that the Trustee's motion to reopen the Debtor's Chapter 7 case comes too late in these proceedings and

should be denied. It is hereby

ORDERED that the Debtor's motion to reopen her Chapter 7 case is **DENIED**; and it is further

ORDERED that the objections of Franklin Life and Cooksey to the Debtor's motion to reopen her Chapter 7 case are **SUSTAINED**; and it is further

ORDERED that the Trustee's motion to reopen the Debtor's Chapter 7 case is **DENIED**; and it is further

ORDERED that the objections of Franklin Life and Cooksey to the Trustee's motion to reopen the Debtor's Chapter 7 action are **SUSTAINED**; and it is further

ORDERED that the Debtor's motion to set aside discharge and convert to a Chapter 13 action is **DENIED**.

DATED: December ____, 2000

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE