UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

JOSEPH DOMINIC FRANZONE, CASE NO. 98-11459-WSS
INGER DEANN FRANZONE,

Debtors. Chapter 7

ORDER DENYING MOTION TO RECONSIDER COURT'S ORDER OF SEPTEMBER 20, 2000

This matter came on for hearing on the motion of TGM Realty and Harbor Landing Apartments (hereinafter "TGM") to reconsider the Court's order of September 20, 2000. Melissa Wetzel appeared for the Franzones; William R. Lancaster and Jeffrey Hartley appeared for TGM Realty and Harbor Landing Apartments. After due consideration of the pleadings, testimony, evidence and arguments of counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Inger Franzone (hereinafter "Mrs. Franzone") fell on the premises of Harbor Landing Apartments (hereinafter "Harbor Landing")[1] on May 31, 1997. She sought treatment for what she believed to be a minor injury. In August 1997, Mrs. Franzone met with an attorney, Edward Massey (hereinafter "Massey"), about a possible claim against Harbor Landing. She signed an employment contract with Massey at that meeting, although Mrs. Franzone testified that she did not realize that she had retained Massey to represent her at the meeting.

[1]The Court will refer to TGM Realty and Harbor Landing Apartments collectively as "Harbor Landing" throughout this opinion for the sake of brevity.

Massey testified that he asked Mrs. Franzone to check with his office periodically to inform him about her condition. He stated that he believed Mrs. Franzone suffered a back sprain, according to her description of her injuries. Massey wrote a letter of representation to Harbor Landing on September 3, 1997.

The Franzones filed a Chapter 7 petition in this court on April 24, 1998. Mrs. Franzone testified that most of the $52,000.00 debt in the petition represented medical bills that were not related to her injury at Harbor Landing. The Franzones did not list Mrs. Franzone's claim against Harbor Landing in their bankruptcy schedules or statement of affairs. Mrs. Franzone testified that when she filed her petition, she did not think her injury was serious and did not realize that she had a claim to be listed in her bankruptcy schedules. Massey testified that his file reflects that he did not meet with Mrs. Franzone or contact her from the time of their initial meeting until the time that she filed her bankruptcy petition.

The Franzones received their discharge on September 9, 1998. On October 1, 1998, Massey made a formal settlement demand of $22,194.00 on Mrs. Franzone's behalf. Mrs. Franzone testified that she learned that her injury was more serious on October 10, 1998 when her doctor told her that she had a herniated disk. She had surgery in October 1999, and now has to use a wheelchair. Mrs. Franzone testified that she did not realize that she needed to reopen her bankruptcy petition and add the claim against Harbor Landing even after the bankruptcy case was closed.

The Franzones filed an action in state court against Harbor Landing on February 5, 1999. Harbor Landing filed a motion for summary judgment in the state court action on August 14, 2000. The grounds for the motion for summary judgment was judicial estoppel.

The Franzones filed a motion to reopen their Chapter 7 case on September 19, 2000, and the bankruptcy court granted the motion to reopen on September 20, 2000. Mrs. Franzone testified that she did not realize that she was required to list the claim as an asset of her bankruptcy estate until Harbor Landing filed its motion for summary judgment. She understands that any amount recovered in the state court lawsuit would first be used to pay her creditors. Massey, Mrs. Franzone's attorney in the state court action, testified that he did not know about the bankruptcy case until the motion for summary judgment was filed. Harbor Landing moved the Court to reconsider granting the motion to reopen on September 28, 2000.

CONCLUSIONS OF LAW

A bankruptcy court may reopen a closed bankruptcy action "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. §350(b). Courts have wide discretion to reopen cases, and 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). 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 of reopening the bankruptcy case to the Franzones is apparent. By including the state court action as an asset of their bankruptcy estate, they may defeat Harbor Landing's motion for summary judgment based on judicial estoppel. The prejudice to Harbor Landing is equally clear. In the body of their motion to reopen, the Franzones stated that

they had informed the Trustee of the asset, and that he agreed that reopening would be to the benefit of their creditors. Mrs. Franzone acknowledged in her testimony that she realized that any proceeds from the action would be used first to pay her creditors. As a result, the Franzones' creditors would benefit from any recovery. The only party to receive a benefit from the Court's refusal to reopen the Franzones' case is Harbor Landing. The Court finds that the Franzones' bankruptcy case should be reopened absent any fraud or bad faith on the part of the Franzones.

Harbor Landing asks the Court to reconsider its decision to reopen the Franzones' bankruptcy case because they did not act to reopen their case and amend their schedules until Harbor Landing filed its motion for summary judgment based on judicial estoppel in the state court action. Harbor Landing suggests that the Franzones were not honest with the Court because they did not inform the Court that they were reopening their case to list the state court action in their schedules "only to avoid the judicial estoppel defense in the State Court Action." Harbor Landing's Motion to Reconsider, page 2, para. 7.

Recently, the Court dealt with the issue of whether to allow a debtor to reopen her bankruptcy case to add a state court action as an asset of the estate in the face of a motion for summary judgment in the state court action based on judicial estoppel. See In re Sandra Dixon, Case Number 00-10258. In that case, there was evidence that the debtor deliberately did not list a state court action in her bankruptcy schedules in not one but two Chapter 7 proceedings. The Court denied the Debtor's motion to reopen her second Chapter 7 petition, largely due to her intentional omission of the lawsuit.

The facts of the present case stand in sharp contrast. At the time that she filed her

bankruptcy petition, Mrs. Franzone was still undergoing treatment for an injury that both she and her attorney believed to be muscle sprain. It is true that she contacted an attorney and retained him to represent her prior to filing the bankruptcy petition. However, her attorney undoubtedly explained to her the contingent nature of her claim against Harbor Landing. Mrs. Franzone may not have understood that an uncertain recovery can be considered an asset in a bankruptcy estate. As stated in the Dixon case, people outside the legal field often do not understand the meaning of legal terms of art such as a "claim." By the time that Mrs. Franzone filed suit on her claim, she had received her discharge and the bankruptcy case had been closed for approximately five months. It does not seem unusual to the Court that Mrs. Franzone did not realize that she was required to reopen her case to include a pre-petition asset. Mrs. Franzone's attorney for her state court action testified that he did not know that she had filed bankruptcy until Harbor Landing filed its motion for summary judgment. There was also no evidence that Mrs. Franzone's bankruptcy attorney knew that she had a claim against Harbor Landing until after the bankruptcy case was closed.

The Court finds that the Franzones' motion to reopen their bankruptcy case was adequate to explain to the Court why the case should be reopened under §350. The Court is not aware of a requirement that the Franzones inform that the Court of the pending summary judgment in state court. While the information would have allowed the Court to weigh the benefits and prejudice to the parties at the time that motion was granted rather than in response to a motion to reconsider, the Court does not interpret the omission of the information as bad faith. Based on the foregoing, the Court finds that Harbor Landing's motion to reconsider the Court's order of September 20, 2000 should be denied. It is hereby

ORDERED that the motion of TGM Realty and Harbor Landing Apartments to reconsider the Court's order of September 20, 2000 is **DENIED**.

DATED: December ___, 2000

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE