

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
LINARD C. ALLEN,) Case No. 19-12304
)
Debtor.)

ORDER REOPENING CHAPTER 13 CASE AND
DEFERRING PAYMENT OF REOPENING FEE

The debtor filed this chapter 13 case on July 8, 2019. The court granted the chapter 13 trustee’s motion to dismiss and dismissed the case on September 27, 2019, prior to confirmation, due to the debtor’s failure to make plan payments. The court then closed the case on November 27, 2019. On November 17, 2020, the chapter 13 trustee filed a motion to reopen the case “to administer a personal injury claim.” (*See* doc. 51). The debtor orally opposed the trustee’s motion at a hearing held on January 13, 2021. For the reasons discussed below, the court grants the motion to reopen (doc. 51) and reopens this chapter 13 case.

The debtor’s attorney in the underlying claim at issue appeared at the January 13 hearing and provided additional information to the court. The claim is actually a product liability suit pending in a federal court MDL that has settled for approximately \$30,000. The claim arose prepetition, but the debtor did not list the claim on his bankruptcy schedules and never amended his schedules to include it.

Under Bankruptcy Rule 5010, “[a] case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the [Bankruptcy] Code.” Code § 350(b) provides that the court may reopen a case “to administer assets, to accord relief for the debtor, or for other cause.”

The decision to reopen a bankruptcy case “is left to the sole discretion of the bankruptcy court on a case by case basis looking at the particular circumstances and equities of that specific case.” *See Bank of Am., N.A. v. Rodriguez*, 558 B.R. 945, 948 (S.D. Fla. 2016) (citation and quotation marks omitted); *see also In re Long*, 564 B.R. 750, 761 (Bankr. S.D. Ala. 2017). “When deciding whether to reopen a closed case, courts should generally consider the benefit to creditors, the benefit to the debtor, the prejudice to the affected party, and other equitable factors.” *Rodriguez*, 558 B.R. at 948 (citation omitted). “Courts also consider the availability of an alternative forum for relief and the length of time between the closing of a case and the motion to reopen.” *Id.*

Here, the cause of action was clearly property of the debtor’s chapter 13 bankruptcy estate under Bankruptcy Code § 541. Because the debtor never disclosed the cause of action, it remains property of the estate under Code § 554(d). And because the debtor did not disclose the pending cause of action, the chapter 13 trustee did not have that information when he moved to dismiss the case instead of moving to convert it to chapter 7 under Code § 1307(c). The court finds that the particular circumstances and equities in this case – particularly the debtor’s failure to schedule the products liability claim – favor reopening. The court thus grants the trustee’s motion and reopens this bankruptcy case.

The court also grants the trustee’s application to defer reopening fee. If the trustee collects sufficient funds to pay the fee, then the fee shall be paid but payment is deferred until such time.

Dated: January 14, 2021


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE