

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

IN RE:

CASE NO.: 13-1762-JCO

MICHAEL K. BUSBY,

DEBTOR.

**MEMORANDUM OPINION AND ORDER SETTING ASIDE COURT'S ORDER
GRANTING DEBTOR'S MOTION TO REOPEN CASE**

On October 20, 2015, after notice and a hearing, the Court granted Debtor's Motion to Reopen Chapter 7 Case. (Doc. 27). This matter came before the Court on Tuesday, March 1, 2016, for hearing on the Court's Notice to Correct and Debtor's Request for Telephonic Hearing. (Docs. 31, 38). Instead of granting Debtor's request for telephonic hearing, the Court finds that the previous Order granting Debtor's Motion to Reopen is due to be set aside for the following reasons.

This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the general order of reference of the District Court. This is a core proceeding arising under Title 11 of the United States Code as defined in 28 U.S.C. § 157(b)(2)(A).

The Debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code on May 21, 2013. On July 23, 2013, the Chapter 7 Trustee filed her notice that, after diligent inquiry into the financial affairs of the Debtor and the location of the property belonging to the estate, there was no property available for distribution from the estate over and above that exempted by law; and, pursuant to Rule 5009 of the Federal Rules of Bankruptcy Procedure, the Debtor's estate had been fully administered. (Doc. 13). No notice to file claims was ever issued. The Chapter 7 Trustee requested, and was, discharged from her duties as trustee; the case was pending for two

months, and an order discharging the Debtor from all dischargeable debts was entered on September 27, 2013, (Doc. 21), and the case was closed the same day.

In the Motion to Reopen, the Debtor requested that this case be reopened to amend their schedules to add a creditor, Cash Advance, Inc., who is now trying to collect the debt. (Doc. 27). Pursuant to 11 U.S.C. § 350(b), a case may be reopened "to administer assets, to accord relief to the debtor, or for other cause." Presumably, the Debtor is concerned that the debt was not discharged because of their failure to properly list the debt. The listing of a debt in the schedules is not a condition of its discharge under 11 U.S.C. § 727. That section provides that "a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief" 11 U.S.C. § 727(b). Nothing in § 727 prevents an unscheduled debt from being discharged.

This case is what is commonly referred to as a "No-Asset Chapter 7," i.e., there are no assets to administer and creditors are not even required to file claims. Most courts have held that in a no-asset case, a dischargeable debt is discharged even when a creditor has been omitted from schedules, and thus reopening the case is both unnecessary and futile. *In re Nielsen*, 383 F.3d 922, 925; *In re Madaj*, 149 F.3d 467, 468, 470, 472; *Judd v. Wolfe*, 78 F.3d 110, 114; *see In re Beezley*, 994 F.2d 1433, 1436. The reasoning is that no claim can be untimely in a no-asset case because, pursuant to Federal Rule of Bankruptcy Procedure 2002(e), no deadline is ever set for creditors to file claims. Therefore, 11 U.S.C. § 523(a)(3)(A), which makes some otherwise dischargeable debts non-dischargeable if the debtor neglects to schedule them in time for the creditor to timely file a proof of claim, does not apply. *In re Nielsen*, 383 F.3d at 925 (adopting the holding and reasoning of *In re Beezley*, 994 F.2d at 1436); *In re Madaj*, 149 F.3d at 472; *Judd*, 78 F.3d at 114. This Court agrees.

The Discharge Order entered on September 27, 2013, includes the following language:

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. ... A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

(Doc. 17). This Court is concerned by the actions of the unscheduled creditor, but makes no finding related thereto. The creditor may have had no knowledge of the bankruptcy. While knowledge of the bankruptcy has no bearing on the discharge of the debt, it does have bearing on the creditor's ability to have its debt deemed non-dischargeable. See, 11 U.S.C. § 523(c) and FRBP 4007(b).

Consequently, the Court concludes that cause did not exist for the case to be reopened, and the order granting such is set aside. Any debts which were incurred prior to the filing of this case on May 21, 2013, were discharged by the Court's Order of Discharge entered September 27, 2013, a copy of which is attached. Accordingly, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Order granting Debtor's Motion to Reopen is **SET ASIDE**. The Clerk is **DIRECTED** to refund to the Debtor's Attorney the fee incurred in reopening his case.

IT IS FURTHER ORDERED that the attorney for the Debtor shall serve a copy of this **ORDER** on Cash Advance, Inc., and its attorney within 3 days of receiving same.

Dated: March 2, 2016


JERRY C. OLDSHUE, JR.
U.S. BANKRUPTCY JUDGE

United States Bankruptcy Court

Southern District of Alabama

Case No. 13-01762

Chapter 7

In re Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Michael K Busby
aka Kevin Busby, aka Michael Busby, aka
Michael Kevin Busby
901 Gayfer Ave.
Apartment 828
Fairhope, AL 36532

Social Security / Individual Taxpayer ID No.:

xxx-xx-1448

Employer Tax ID / Other nos.:

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge,

IT IS ORDERED:

The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

BY THE COURT

Dated: 9/27/13

WILLIAM S. SHULMAN
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.