

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

In re:)
)
TARVER HENLEY, INC.,) Case No. 19-10631
)
Debtor.)

ORDER DENYING MOTION TO REOPEN AND
DENYING ALL OTHER PENDING MOTIONS AS MOOT

This chapter 7 case is before the court on the motion of creditors Newtek Small Business Finance, LLC and CDS Business Services, Inc. (collectively, “creditors”) to reopen this case (doc. 43) and simultaneously hear their motion to determine secured status (doc. 45). For the reasons discussed herein, the court denies the motion to reopen (doc. 43) and denies all other pending motions as moot.

The creditors ask that the court reopen the case to determine a lien priority dispute between them and Tar-Hen, LLC, as outlined more particularly in the motion to determine secured status (doc. 45). The creditors also seek various relief regarding allegedly missing collateral. With the consent of the chapter 7 trustee, the court granted the creditors’ motions for relief from stay on June 27, 2019 (*see* docs. 35, 36) with respect to the property that is the subject of the motion to determine secured status. The trustee then filed a report of no distribution on September 5, 2019, and the bankruptcy case was closed on September 6, 2019.

To the extent the property made the subject of the pending motions was not fully administered by the stay lift, it was abandoned at closing pursuant to 11 U.S.C. § 554(c). The lien priority dispute raised by the creditors does not “arise under” the Bankruptcy Code or “relate to” the chapter 7 case because it does not involve property of the estate. The court thus lacks

jurisdiction under 28 U.S.C. § 157(a) to adjudicate the dispute. *See, e.g., In re Cuevas*, No. 06-01328-BKC-LMI, 2007 WL 397006, at *4 (Bankr. S.D. Fla. Feb. 1, 2007); *see also In re Faloye*, 459 B.R. 865, 867-68 (Bankr. N.D. Ga. 2011); *Matter of Climate Control Engineers, Inc.*, 51 B.R. 359, 361 (Bankr. M.D. Fla. 1985); *In re Robinson*, No. 14-1017, 2014 WL 7239459, at *2 (Bankr. W.D. Ky. Dec. 17, 2014).

Even if the court had jurisdiction, the next issue would be whether the case should be reopened. Under 11 U.S.C. § 350(b), the court may reopen a closed case “to administer assets, to accord relief to 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.*

The court has considered the circumstances and equities presented in this case and finds that the motion to reopen should be denied under § 350(b) if it had jurisdiction. The court does not see any benefit to the debtor or other creditors (besides the movants) in reopening this case to decide a lien priority dispute regarding property in which the creditors claim an exclusive interest by virtue of the court’s orders granting relief from stay. Rather, this dispute presents state law

issues which can be adjudicated by a state court (or federal court exercising diversity jurisdiction, if applicable).¹

The court thus denies the motion to reopen (doc. 43) based on its lack of jurisdiction over the underlying dispute and because it does not find reopening warranted in any event. The court denies all other pending motions without prejudice as moot.

Dated: September 13, 2019


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

¹ In this respect, nothing in this order should be construed as a ruling on the underlying merits of the creditors' motion to determine secured status.