



A handwritten signature in blue ink that reads "Neil P. Olack".

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: March 23, 2017

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE:

JIMMY L. CORK, SR.,

CASE NO. 14-11810-NPO

DEBTOR.

CHAPTER 7

ORDER DENYING DEBTOR'S MOTION TO REOPEN BANKRUPTCY CASE

This matter came before the Court on the Debtor's Motion to Reopen Bankruptcy Case (the "Motion") (Dkt. 31) filed by the debtor, Jimmy L. Cork, Sr. (the "Debtor"), in the above-styled chapter 7 bankruptcy case (the "Bankruptcy Case"). After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Notice of the Motion was proper under the circumstances.

Facts

1. The Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code on May 9, 2014. (Dkt. 1).

2. On November 19, 2014, the Clerk of the Bankruptcy Court (the “Clerk”) sent the Debtor the Notice of Failure to File a Statement of Completion of Course in Personal Financial Management (the “Clerk’s Notice”) (Dkt. 25). In the Clerk’s Notice, the Clerk informed the Debtor that in order to receive a discharge, he must complete an instructional course in personal financial management and file in the Bankruptcy Case the Debtor’s Certification of Completion of Instructional Course Concerning Personal financial Management (Official Form 23) (the “Postpetition Certification”).

3. The Debtor failed to file the Postpetition Certification in compliance with the Clerk’s Notice.

4. The Court entered the Final Decree/Order Closing Case (Dkt. 27) on March 23, 2015. On that same day, the Clerk issued the Notice of Case Closed Without Discharge (Dkt. 28).

5. The Debtor filed the Motion on February 16, 2017, nearly two (2) years after the Bankruptcy Case was closed without the entry of a discharge. In the Motion, the Debtor asked the Court to reopen the Bankruptcy Case “for the purpose of filing [the] Financial Management Certificate and to receive a discharge pursuant to 11 U.S.C. § 727.” (Mot. at 1).

Discussion

A closed bankruptcy case may be reopened pursuant to § 350(b)¹ “to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b). Section 350(b) grants the Court broad discretion to reopen a closed case when a debtor can show cause as to why the

¹ All code sections refer to the Bankruptcy Code in title 11 of the U.S. Code, unless stated otherwise.

bankruptcy case should be reopened. *Citizens Bank & Trust Co. v. Case (In re Case)*, 937 F.2d 1014, 1018 (5th Cir. 1991); 3 COLLIER ON BANKRUPTCY § 350.03 (16th ed. 2016). Whether a court should grant a motion to reopen depends upon the circumstances of the individual case. *Id.*

A court's power to reopen a case is not limited by a certain time period under § 350(b) or Rule 5010 of the Federal Rules of Bankruptcy Procedure. However, "[t]he longer the time between the closing of the estate and the motion to reopen . . . the more compelling the reason for reopening the estate should be." *In re Case*, 937 F.2d at 1018. Additionally, the doctrine of laches may apply to bar the reopening of a bankruptcy case that has been closed for a significant amount of time. 3 COLLIER ON BANKRUPTCY ¶ 350.03[6].

A. § 350(b)

In *In re Lancellotti*, No. 10-04152-NPO (Dkt. 65), slip op. (Bankr. S.D. Miss. July 2, 2014), this Court held that a debtor must show cause as to why his or her bankruptcy case should be reopened and that a three (3)-year delay prohibited the debtor from establishing a compelling reason to reopen the bankruptcy case under the specific facts of that case. *Id.* at 4. The bankruptcy case in *Lancellotti* was closed without a discharge because the debtor failed to file the Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management. *Id.* at 2. Three (3) years later, the debtor filed a motion to reopen in order to file the certification necessary for her to obtain a discharge. *Id.* In denying the motion to reopen, this Court noted that the debtor "fails to provide any explanation for the length of the delay in completing the instructional course." *Id.* at 3. Further, the doctrine of laches barred the bankruptcy case from being reopened because the debtor made no effort to comply with the certification requirement until three (3) years after the bankruptcy case was closed. *Id.* at 4.

In *In re Ruckes*, this Court denied a motion to reopen to allow a debtor to file the certification required to obtain a discharge five (5) years after the bankruptcy case was closed. *In re Ruckes*, No. 08-02611-NPO (Dkt. 79), slip op. (Bankr. S.D. Miss. June 17, 2014).² The Court found that because the debtor's delay was "inexcusable," the debtor could not show cause why the bankruptcy case should be reopened. *Id.* at 4. This Court also found that the doctrine of laches operated as a bar to reopening. *Id.* Facts important to this Court's decision were that: (a) the debtor received formal notice of the certification required; (b) the debtor failed to comply with the certification requirement; and (c) the debtor did not offer an explanation for her failure to comply or delay in bringing the motion. *Id.* at 4-5.

The Court finds that the Debtor has failed to show cause as to why the Bankruptcy Case should be reopened. The Clerk notified the Debtor on November 19, 2014, that the Bankruptcy Case would be closed without entry of a discharge if he failed to file the Postpetition Certification within fourteen (14) days. Almost two (2) years later, the Debtor seeks to reopen the Bankruptcy Case in order to file the Postpetition Certification but does not explain why he failed to take any action either before the Bankruptcy Case was closed or in the nearly two (2) years that have passed since then. He alleged in the Motion only that "there is sufficient cause to reinstate the case." (Mot. at 1). The Court finds, under the particular facts of the Bankruptcy Case, that this inexcusable delay prohibits the Debtor from showing cause under § 350(b).

² In *In re Ruckes*, the Court had granted a previous motion to reopen the bankruptcy case in order to prevent the disclosure of confidential information contained in a proof of claim. *In re Ruckes*, No. 08-02611-NPO (Dkt. 79), slip op. at 2. After such relief was obtained, the bankruptcy case was again closed. *Id.* at 4. In denying the debtor's motion to reopen, the Court considered the amount of time that had elapsed since the bankruptcy case was closed the first time. *Id.*

B. Laches

As stated previously, the doctrine of laches bars the reopening of the Bankruptcy Case. The doctrine of laches requires proof of two (2) elements: “(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” *Costello v. United States*, 365 U.S. 265, 282 (1961) (citations omitted). “The doctrine of laches is important in bankruptcy proceedings because ‘a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period of time.’” *In re Lancellotti*, No. 10-04152-NPO (Dkt. 65), slip op. at 4 (quoting *Katchen v. Landy*, 382 U.S. 323, 328 (1966)). In the Bankruptcy Case, the first element is met because the Debtor made no effort to file the Postpetition Certification in compliance with the Clerk’s Notice. The Debtor also failed to offer any explanation for his failure to comply. The second element is also met because, under the facts of the Bankruptcy Case where creditors have relied in good faith on the administration and closing of the Bankruptcy Case without a discharge for nearly two (2) years, “it would be prejudicial and unfair to allow the Debtor to obtain a discharge at this late date.” *In re Lancellotti*, No. 10-04152-NPO (Dkt. 65), slip op. at 4.

Conclusion

As it has previously held, this Court’s ruling “does not suggest that the passage of time, without more, is generally sufficient to establish laches.” *In re Ruckes*, No. 08-02611-NPO (Dkt. 79), slip op. at 5. Given that the Clerk’s Notice informed the Debtor that he was required to file the Postpetition Certification to receive a discharge, his failure to comply, and the nearly two (2) year delay in filing the Motion, the Court finds that the Debtor has not met his burden to show cause as to why the Bankruptcy Case should be reopened pursuant to § 350(b) and, in addition,

finds that the doctrine of laches bars the reopening of the Bankruptcy Case. Accordingly, the Court finds that the Motion should be denied.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

##END OF ORDER##