



SO ORDERED,

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: April 21, 2015**

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

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

IN RE:

**ANNETTER CHARLINE CHRISTMAS AND
DALE LAMONTE CHRISTMAS,**

CASE NO. 13-01435-NPO

DEBTORS.

CHAPTER 7

**ORDER OVERRULING OBJECTION AND
DENYING REQUEST TO RESET 11 U.S.C. § 341 MEETING OF CREDITORS**

This matter came before the Court for hearing on April 13, 2015 (the "Hearing") on the Objection to Amended Schedules, or in the Alternative, Request to Re-Set Meeting of Creditors (the "Objection") (Dkt. 22) filed by Capital Furniture Company, Inc. ("Capital Furniture") in the above-styled bankruptcy case (the "Bankruptcy Case"). At the Hearing, Stacey Moore Buchanan ("Buchanan") appeared on behalf of Capital Furniture, and Richard R. Grindstaff appeared on behalf of Annetter Charline Christmas ("A. Christmas") and Dale Lamonte Christmas (together with A. Christmas, the "Debtors"). The Court, being fully advised in the premises, finds as follows:

1. On February 25, 2013, A. Christmas purchased furniture on credit from Capital Furniture. (Dkt. 22 Ex. A).
2. On April 30, 2013, the Debtors filed a voluntary petition for relief (the "Petition") (Dkt. 1) pursuant to chapter 7 of the United States Bankruptcy Code (the "Bankruptcy Code").

3. Also on April 30, 2013, the Debtors filed their statements and schedules regarding their income, expenses, and creditors (the “Statements and Schedules”) (Dkt. 3). The Debtors did not identify Capital Furniture on any of their Statements and Schedules.

4. On July 1, 2013, Eileen N. Shaffer, the standing chapter 7 trustee, entered the Chapter 7 Trustee’s Report of No Distribution.

5. On September 23, 2013, the Court issued the Discharge of Debtor (Dkt. 13) granting the Debtors a discharge under 11 U.S.C. § 727¹ and Final Decree/Order Closing Case (Dkt. 13-1) closing the Bankruptcy Case.

6. On February 12, 2015, the Debtors filed the Motion to Reopen (the “Motion to Reopen”) (Dkt. 16) requesting the Court to reopen the Bankruptcy Case so that the Debtors could amend the Statements and Schedules to include pre-petition creditors they omitted.

7. Also on February 12, 2015, the Debtors filed an amended version of Schedule F – Creditors Holding Unsecured Nonpriority Claims (the “Amended Schedule F”) (Dkt. 18 at 3-6) that included a debt of \$622.10 to Capital Furniture and the Notice of Amendment of Schedules (the “Notice”) (Dkt. 19) that was served on Capital Furniture. The Notice provided that if Capital Furniture wanted to request a § 341 meeting of creditors, such request must be made by March 5, 2015. The Notice also provided that if Capital Furniture wished to object to the Debtors’ discharge under § 727(a), it must file a complaint by April 13, 2015.

8. On March 12, 2015, the Court issued the Order Approving Motion to Reopen Case (Dkt. 21) granting the Motion to Reopen.

9. Also on March 12, 2015, Capital Furniture filed the Objection requesting the Court to either (1) enter an order denying the inclusion of Capital Furniture in the Amended

¹ Hereinafter, all code sections refer to the Bankruptcy Code found at title 11 of the United States Code unless otherwise noted.

Schedule F “and, thereby, in [the] Debtor’s discharge” or (2) reset the § 341 meeting of creditors. The Court notes that Capital Furniture’s Objection did not challenge the timing or sufficiency of the Amended Schedule F or the Notice. As such, the Court does not make any determination in this Order as to the timing or sufficiency of the Amended Schedule F or the Notice.

10. At the Hearing, Buchanan informed the Court that A. Christmas continued to make payments to Capital Furniture after filing the Petition in April 2013. According to Capital Furniture, A. Christmas, through a combination of direct payments and a court-ordered wage garnishment, has paid all but \$400.00 to \$600.00 of her balance to Capital Furniture. In addition, Buchanan conceded that the request to reset the § 341 meeting of creditors contained within the Objection was filed after the deadline prescribed in the Notice.

11. Amendments to schedules are generally and liberally allowed under Rule 1009 of the Bankruptcy Code. *See Stinson v. Williamson (In re Williamson)*, 804 F.2d 1355, 1358 (5th Cir. 1986) (“The law in this circuit at least since 1969 has been to follow the general rule of liberal amendment”) (citation omitted). The right to amend, however, is not absolute as an amendment may be denied “if there is a showing of the debtor’s bad faith or of prejudice to the creditors.” *Unruh v. Tow (In re Unruh)*, 265 F. App’x 148, 150 (5th Cir. 2008) (unpublished). In *Unruh*, the Fifth Circuit Court of Appeals held that a “finding of bad faith requires some form of deception, such as an effort to mislead creditors or to conceal assets as opposed to a mere mistaken failure to list an asset or to claim an exemption.” *Unruh*, 265 F. App’x at 150. Courts have noted that the terms “bad faith” and “prejudice to the creditors” are difficult to satisfy and require a fact-specific analysis. *See McFatter v. Cage*, 204 B.R. 503, 508 (S.D. Tex. 1996). Here, the only conduct relied upon by Capital Furniture in support of the Objection is the short time period between A. Christmas’ purchase of the furniture and the Debtors’ filing of the Petition (64

days). The Court finds that this assertion alone does not rise to the level of “bad faith” as described by the Fifth Circuit in *Unruh*. The Court also finds that allowing the Debtors to amend their Statements and Schedules does not prejudice Capital Furniture as the “filing of an amended creditor schedule after discharge has been granted in a no asset Chapter 7 case has absolutely no effect on the dischargeability of debt.” *In re Dye*, 108 B.R. 135, 138 (Bankr. W.D. Tex. 1989) (quoting another source); *see* 4 COLLIER ON BANKRUPTCY ¶ 523.09[2] (16th ed. 2015). Moreover, an order denying the inclusion of Capital Furniture from the Statements and Schedules would not be tantamount to a determination of the issue of whether Capital Furniture’s claim was discharged. Any determination regarding the dischargeability of the Debtors’ debt to Capital Furniture would have to be made in an adversary proceeding. *In re Dye*, 108 B.R. at 138; *see* FED. R. BANKR. P. 7001(6). For these reasons, the Court finds that the Debtors should be allowed to amend their Statements and Schedules to include Capital Furniture and the Objection should be overruled. In addition, the Court finds that Capital Furniture’s request to reset the § 341 meeting of creditors is untimely under the terms of the Notice and, thus, should be denied.

IT IS, THEREFORE, ORDERED that the Objection hereby is overruled and the request to reset the § 341 meeting of creditors hereby is denied.

##END OF ORDER##