



SO ORDERED,

**Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: October 8, 2024**

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:

**JOHN K. HUNTER dba TAKE CARE
PHARMACY, dba ABG
CONTRACTORS, INC., dba TRI COUNTY
CONTRACTORS, INC. dba HUNTER
ASSET, HOLDING LLC, fdba JERICHO,
HUNTER ASSET MANAGEMENT, LLC,**

CASE NO. 19-00476-JAW

DEBTOR.

CHAPTER 7

ORDER DENYING MOTION TO REOPEN CHAPTER 7 CASE

This matter came before the Court for hearing on September 23, 2024 (the “Hearing”), on the Motion to Re-Open Chapter 7 Case (the “Motion to Reopen”) (Dkt. #78) filed by the debtor John K. Hunter (the “Debtor”) and the Objection of Mississippi Home Corporation to Motion to Re-Open Chapter 7 Case (the “Objection”) (Dkt. #80) filed by Mississippi Home Corporation (“MHC”) in the above-referenced bankruptcy case (the “Bankruptcy Case”). At the hearing, Michael M. Williams represented the Debtor, John K. Hunter, who was also present. Jeremy L. Retherford represented MHC. The Debtor seeks to re-open his Bankruptcy Case to avoid MHC’s purported lien. After fully considering the matter, the Court finds as follows:

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (K). Notice of the Hearing was proper under the circumstances.

Facts¹

On January 22, 2019, MHC was awarded a judgment against the Debtor in the amount of \$544,618.66, less a set-off of \$35,000, after a state court jury trial. (Dkt. #80; Cl. #1-1). The Debtor filed a chapter 7 petition for relief on February 7, 2019. (Dkt. #1). Fourteen days later, on February 21, 2019, MHC filed a proof of claim asserting a \$509,618.66 judgment debt secured by a judicial lien on “all assets.” (Cl. #1-1). Attached to the proof of claim is the final judgment issued on January 22, 2019 and an abstract of the judgment filed on February 5, 2019, one day before the bankruptcy filing.

In his bankruptcy schedules, which he filed on March 1, 2019, the Debtor listed MHC as an unsecured creditor and described the debt to MHC as an “Unsecured Judgment” in an “Unknown” amount. (Dkt. #32 at 18). Notwithstanding MHC’s claim of secured status in its proof of claim, he never took action to strip off or avoid the judgment lien during the pendency of his Bankruptcy Case. However, as MHC points out, the Debtor did file a motion to avoid a nonpossessory, nonpurchase money security interest of another creditor on his personal and household goods during the pendency of his Bankruptcy Case. (Dkt. ##37, 58). The Debtor received a discharge on June 12, 2019, and his Bankruptcy Case was closed on August 4, 2020 without the lien being avoided. (Dkt. ##70, 75). Four years later, on August 18, 2024, the Debtor filed the Motion to Reopen his Bankruptcy Case. (Dkt. #78). According to the Motion to Reopen,

¹ The following findings of fact and conclusions of law are made pursuant to Rules 7052 and 9014(c) of the Federal Rules of Bankruptcy Procedure.

the Debtor seeks to file a motion to avoid the fixing of MHC's judgment lien on his "exempt property" so that he and his non-filing spouse may refinance a mortgage. (Hr'g at 1:34 (Sept. 23, 2024)).²

The property at issue is a house located on five acres at 2935 Highway 467, in Edwards, Mississippi. On the bankruptcy schedules, the Debtor listed the house as an asset of the bankruptcy estate but added this language at the bottom: "Note in Debtor's Non Filing Spouse's Name." (Dkt. #32 at 2). He also indicated on the form that "at least one of the debtors and another" have an interest in the property. (Dkt. #32 at 2). Then, he claimed a homestead exemption in the amount of \$75,000. (Dkt. #32 at 11). The Debtor's schedules are thus unclear as to what interest, if any, he possesses in the home. (Dkt. #32). At the Hearing, the Debtor represented to the Court that he did not then, and does not now, own the house. He specified that his name was not on the mortgage and the house was owned solely by his non-debtor wife.³ The Debtor did not introduce any land records, mortgage notes, or other documents into evidence.

Discussion

A closed bankruptcy case may be reopened pursuant to § 350(b) "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). The Court has broad discretion to reopen a closed case when a debtor can show cause as to why the bankruptcy case should be reopened based on the circumstances of their individual case. *Citizens Bank & Trust Co. v. Case (In re Case)*, 937 F.2d 1014, 1018 (5th Cir. 1991). The Court has no reason to reopen the bankruptcy case "if substantive relief [cannot] be granted in the reopened case. *The First Nat'l*

² The Hearing was not transcribed. Citations are to timestamp of the audio recording.

³ "I don't own the house or land." (Hr'g at 2:07:19). "The mortgage company's lien is on the house and the land, without me on there." (Hr'g at 2:06:50). At the time of the conveyance of the land to the Debtor, the house had not yet been built. Apparently, both the Debtor's and his wife's names appear on the land deed dated 1994, a copy of which was not introduced into evidence. The Debtor represented to the Court that he did not sign the mortgage on the house and does not own the house, despite his apparent ownership of the land on which it sits.

Bank of Jefferson v. Goetz (In re Goetz), Adv. No. 08-3341, 2009 WL 1148580, at *2 (Bankr. S.D. Tex. Apr. 24, 2009). Further, the Court can reopen the bankruptcy case to allow a debtor to “file a lien avoidance action *unless* the creditor has been unduly prejudiced by delay on the debtors part.” 3 COLLIER ON BANKRUPTCY ¶ 350.03[3] (16th 2024) (emphasis added).

A. Debtor seeks to avoid a judicial lien on a house that he claims he does not own.

The Debtor seeks to avoid MHC’s purported judicial lien based on § 522(f)(1), which provides in pertinent part: “[T]he debtor may avoid the fixing of a lien *on an interest of the debtor* in property to the extent that such lien impairs an exemption... if such lien is... a judicial lien.” 11 U.S.C. § 522(f)(1) (emphasis added). That statute, however, does not authorize a bankruptcy court to eliminate a lienholder’s rights with respect to a non-debtor’s interest in the property. *In re Alvarez*, 733 F.3d 136, 142 (4th Cir. 2013). A debtor cannot strip a lien from property that is not property of the estate or is otherwise a non-debtor’s interest.

According to the Debtor, only his non-filing spouse has an interest in the house. Property of the non-filing spouse would only be property of the bankruptcy estate as “specified in the Bankruptcy Code.” *In re Nahat*, 278 B.R. 108, 114 (Bankr. N.D. Tex. 2002). According to the Bankruptcy Code, property of the estate “[is] determinable by non-bankruptcy, typically state, law.” *Id.* at 112 (citations omitted).

Simply put, the Debtor was unable to show at the Hearing what interest, if any, he had in the house. If the Debtor does not own the property, the lien cannot be avoided and reopening the Bankruptcy Case to claim an exemption would be futile. Based on the limited evidence presented at the Hearing, there would be no substantive relief to grant the Debtor if the Bankruptcy Case

were reopened. For this reason, the Court denies the Motion to Reopen and sustains MHC's Objection.⁴

B. MHC has been prejudiced by the Debtor's four-year delay, and the Debtor has not provided an adequate reason to reopen despite this prejudice.

Alternatively, if the Debtor did own some interest in the home and MHC's judgment lien was avoidable during the Bankruptcy Case, the Court is not persuaded to grant the Motion to Reopen due to the amount of time that has passed after the Bankruptcy Case was closed. "The 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. MHC acknowledges some situations require reopening a case to avoid a lien but points to case law that supports its contention that four years is too long of a wait. (Dkt. #80 at 1) (citing *In re Rauseo*, No. 08-18916, 2015 WL 1956230, at *2 (Bankr. S.D. Fla. April 28, 2015) for its holding that waiting "nearly four years" was "simply too long."). While delay in itself is not necessarily prejudicial, it "may be prejudicial when it is combined with other factors." *In re Tarkington*, 301 B.R. 502, 507 (Bankr. E.D. Tenn. 2003) (citation omitted).

While this Court does not have a bright line deadline in place for reopening bankruptcy cases, and does not create one in this Order, the Court has found that "the longer the delay, the more vulnerable the debtor becomes to the doctrine of laches being invoked." *In re Rowcliff, III*, No. 13-52413-NPO, slip op. at 9 (Bankr. S.D. Miss. June 6, 2016), Dkt. #41. This Court has previously held that "a determination [must be] made as to the amount of prejudice caused by the debtor's delay in applying the doctrine of laches to a motion to reopen to avoid a judicial lien." *Id.* slip op. at 11.

⁴ In denying the Motion to Reopen, the Court makes no definitive ruling as to the ownership of the house or its status as exempt homestead property.

The doctrine of laches requires proof of: (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). 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,” the doctrine of laches is important in bankruptcy proceedings. *Katchen v. Landy*, 382 U.S. 323, 328 (1966).

Here, the first element is satisfied as the Debtor’s lack of diligence is shown by the fact that he knew how to avoid a lien and had plenty of time during the Bankruptcy Case to move to avoid MHC’s lien as the Debtor did with the other creditor. Moreover, MHC filed the first proof of claim in the Bankruptcy Case just fourteen days after the filing (and before Debtor filed his schedules) and 111 days before the Debtor’s discharge. (Dkt. #70). The second laches element is also satisfied in that MHC has successfully shown that it has been prejudiced by the long delay and in incurring costs to defend this Motion to Reopen. MHC also argues that it would be further prejudiced by the need to defend an avoidance action if the case were reopened. (Dkt. #80 at 3-4). This prejudice weighs against re-opening the Debtor’s bankruptcy case.

Conclusion

This is not a situation where a judicial lien was overlooked, as MHC’s asserted secured claim was clearly “on the record” from the onset of the bankruptcy case. As the bankruptcy court noted in *In re All. Consulting Grp. LLC*, 588 B.R. 169, 175 (Bankr. S.D. Miss. 2018) (Samson, J.), *aff’d sub nom. Plant Materials, LLC v. All. Consulting Grp., LLC*, 596 B.R. 851 (S.D. Miss. 2019),

the “Bankruptcy Code favors finality” and reopening a case a year after it was closed “would contravene the finality on which all parties have relied.” *Id.*

IT IS, THEREFORE, ORDERED that the Objection by MHC is hereby sustained and the Motion to Reopen is hereby denied.

##END OF ORDER##