IT IS ORDERED as set forth below:

Date: August 6, 2014

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBERS**
	:	
FRANK B. FLANDERS, JR.,	:	BANKRUPTCY CASE
	:	NO. 11-10364-WHD
	:	
Debtors.	:	IN PROCEEDINGS UNDER
	:	CHAPTER 11 OF THE
	:	BANKRUPTCY CODE

O R D E R

Wells Fargo Bank, N.A. (hereinafter "Wells Fargo") requests permission from the Court to reopen the Chapter 11 bankruptcy case of Frank B. Flanders, Jr. (hereinafter the "Debtor"), so that it may commence an adversary proceeding seeking declaratory relief as to the treatment of a prepetition lien it held on certain real property of the Debtor and intervening injunctive relief. The Debtor opposes the motion. The Court held a hearing on the matter on July 1, 2014. Counsel for the Debtor and Wells Fargo attended the hearing, as did representatives for United Community Bank (hereinafter "UCB) and National

Consumer Cooperative Bank (servicer for a non-associated division of Wells Fargo Bank, N.A., representing an interest independent from the moving Wells Fargo) (hereinafter "NCCB")—the two largest unsecured creditors of the Debtor's estate—in support of the Debtor's opposition. After listening to the positions of all those involved, the Court gave the parties 10 days to file supplemental briefs and took the matter under advisement. This matter constitutes a core proceeding as defined under 28 U.S.C. § 157(b)(2)(A) over which this Court enjoys subject matter jurisdiction. See 28 U.S.C. § 157(b)(1); see also 28 U.S.C. § 1334.

Factual and Procedural History

The Debtor sought relief under Chapter 11 of the Bankruptcy Code[1] on February 1, 2011. In accordance with his duties under section 521, the Debtor scheduled Wells Fargo for an unsecured debt of $465,000 on account of a loan made in 1983, initially secured by non-estate real property, known as 6254 Memorial Drive. In 1987, the relevant parties at the time[2] executed a modification to the security deed, adding property with the street address of 6250 Memorial Drive[3] (hereinafter the "Subject Property") as security for the loan. Prior to the commencement of the bankruptcy case, Debtor and Wells Fargo discussed

[1] 11 U.S.C. § 101 *et. seq.*

[2] Wells Fargo acquired the loan through various acquisitions and mergers.

[3] Although the street address of the Subject Property bears the identifier of 6250 Memorial Drive, the mailing address and owner address bear the identifier of 6212 Memorial Drive and records exist showing that it is commonly referred to by using both monikers.

security interests, primarily through foreclosure actions being taken with respect to 6254 Memorial Drive, but apparently neither was aware of the security deed's augmented scope.[4] Accordingly, the Debtor scheduled the Subject Property as an unencumbered asset in the bankruptcy estate under the appellation of 6212 Memorial Drive.

On December 6, 2011, the Court approved Debtor's supplemental motion to sell the Subject Property[5] free and clear of liens to The Pentecostal's of Stone Mountain, Inc. (hereinafter "Pentecostal's") for the sum of $540,000 to be delivered at closing. The Court's Order attached liens to the proceeds of the sale with the same extent and validity that liens attached under applicable state laws. In the motion, Debtor only identified one potential lien on the property, a judgment lien held by UCB and, therefore, only named UCB as a contested party in the caption.[6]

The Court confirmed the Debtor's plan of reorganization (hereinafter the "Plan"), as amended, on March 2, 2010. Pursuant to Class 9 of the Plan, the estate's unsecured claims, totaling approximately $4.1 million were to be entirely funded from the net proceeds, distributed *pro rata*, of the Subject Property[7] ($450,000) and another parcel ($208,566) for

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[4] Wells Fargo proffered at the hearing that it ran five (5) title checks on the deed, but the title checks failed to reveal the modification adding the Subject Property.

[5] The legal description of the Subject Property was not included in the motion or the contract accompanying the motion.

[6] Because Debtor possessed no knowledge of Wells Fargo's lien, service in the contested matter was also not made on Wells Fargo in accordance with Federal Bankruptcy Rule 7004(h), though it was generally served to Wells Fargo at a local branch office.

[7] Identified only as "Memorial II Proceeds," with no reference to "6212" or "6250."

a total of $658,566. Wells Fargo's share amounts to $74,153.

On May 4, 2012, following the death of the Debtor, the appointed administrator of the Plan (hereinafter the "Administrator") filed a post-confirmation Plan modification, seeking now to sell the Subject Property to Pentecostal's under a lease-purchase agreement. The Court approved the modification on July 11, 2012. The Administrator conveyed the Subject Property to Pentecostal's on August 24, 2012 by quit claim deed. Pentecostal's issued a promissory note in the face amount of $540,000 to the estate and granted a security interest in the Subject Property. The Court's December 6, 2011 Order approving the sale to Pentecostal's was recorded in conjunction with the quit claim deed.

The bankruptcy case was closed on August 9, 2012. Wells Fargo never appeared in the case, by counsel or otherwise. Wells Fargo received disbursements as an unsecured creditor, but never filed a proof of claim, never filed or contested a motion, and never voted on the plan of reorganization. At some point in early 2014, Wells Fargo realized it held a prepetition lien on the Subject Property and filed the instant motion before the Court on April 23, 2014, with the intent to seek a determination as to the effect of the Court's various orders on its pre-petition security interest.[8]

Conclusions of Law

Section 350 and Rule 5010 of the Federal Rules of Bankruptcy Procedure govern

[8] Wells Fargo's general theory is that either (1) the sale was made consonantly with the Court's December 6, 2011 Order approving the sale of the Subject Property, and, in accordance thereof, the lien attached to the proceeds of the sale; or (2) because of Wells Fargo's lack of "participation" in the bankruptcy process, the lien passed through unaffected and remains attached to the Subject Property.

motions to reopen. Section 350(b) of the Code provides that a "case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). Rule 5010 further states that a "case may be reopened on motion of the debtor or other party in interest[9] pursuant to § 350(b) of the Code. . . . " FED. R. BANKR. P. 5010. The choice of whether to reopen the case rests within the sound discretion of the bankruptcy court and will not be overruled absent an abuse of such discretion. See In re Banks, 2011 WL 1898701, at *1 (Bankr. N.D.Ga. 2011) (Drake, B.J.); In re Tarrer, 273 B.R. 724, 731-732 (Bankr. N.D.Ga. 2002) (Drake, B.J.); see also In re Poff, 344 F. App'x 523, 525 (11th Cir. 2009) ("[W]e review the bankruptcy court's denial of a motion to reopen for abuse of discretion."). Accordingly, the Court must consider the particular circumstances presented in the case and, using its discretion, decide whether cause exists to reopen it. In re Tarrer, 273 B.R. at 732.

The reopening of a case is typically ministerial, presenting only a limited range of questions, foremost among those, whether cause exists to reopen. In re Clark, 2012 WL 1911926, at *7 (9th Cir. 2012). The Court, despite finding it inviting to give a preliminary assessment to the merits of the underlying substance in its determination as to whether

[9] Although the Bankruptcy Code fails to define the term "party in interest," section 1109 contains a non-exclusive list of what the term encompasses, including "the debtor, the trustee, a creditors' committee, an equity security holders' committee, a *creditor*, an equity security holder, or any indenture trustee . . . ." 11 U.S.C. § 1109(b) (emphasis added). Moreover, as this Court stated previously, the term, "party in interest," should be "'construed broadly, in order to allow parties affected by a Chapter 11 case to appear and be heard.'" In re Tarrer, 273 B.R. 724, 731 (Bankr. N.D.Ga. 2002) (Drake, B.J.) (quoting In re Public Service Co. of New Hampshire, 88 B.R. 546, 550 (Bankr. D.N.H. 1988)). Therefore, the Court finds no issue with Wells Fargo's standing in bringing this motion.

sufficient cause exists, ultimately believes such a precursory review inappropriate. As the Ninth Circuit stated–

> While considerations of economy make it sensible to combine consideration of the motion to reopen with consideration of the dispositive issues in the underlying litigation, and although it is tempting to say that the reopening motion entitles the court to perform a gatekeeping function that justifies inquiring in to [sic] the related relief that will be sought, such inquiries are in fact inappropriate.

Id. (internal citations omitted). In short, a motion to reopen is an inappropriate "battleground for the litigation of the underlying merits." Riggins v. Ambrose, 500 B.R. 190,196 (N.D.Ga. 2013); In re Upshur, 317 B.R. 446, 454 (Bankr. N.D.Ga. 2004) (Bihary, B.J.). The Code and its rules establish procedural mechanisms for hearing disputes between parties to a bankruptcy, which inherently safeguard certain rights of the participants. See e.g. FED. R. BANKR. P. 7001 *et. seq.* If the Court incorporates the substance of the underlying dispute into its reopening analysis, it runs the risk of truncating the adversarial process. In re Clark, 2012 WL at *7 (citing In re Dunning Bros. Co., 410 B.R. 877, 887 (Bankr. E.D.Cal. 2009)). It is enough that there are *bona fide* questions that need definitive answering.

After having reviewed the briefs and considered the positions of all parties concerned, the Court believes that Wells Fargo has raised a *bona fide* question for determination under the appropriate procedures and, furthermore, that this Court is best positioned for interpreting the effect of its own orders pursuant to the Code and relevant law. Ergo, the Court grants Wells Fargo's motion for the purpose of commencing an adversary proceeding.

Conclusion

In the exercise of the Court's discretion, and pursuant to section 350(b) of the Code, the Court finds cause for reopening the above-styled case. Accordingly, it is hereby

ORDERED that the Motion of Wells Fargo Bank, N.A. To Reopen Case is **GRANTED**. The case is hereby reopened to permit Wells Fargo an opportunity to commence and prosecute an adversary proceeding;

FURTHER ORDERED that, if no action is taken by Wells Fargo within thirty (30) days of the entry of this Order, the Clerk is authorized to close this case according to its normal procedures.

The Clerk is **DIRECTED** to serve a copy of this Order upon the Administrator of the Debtor's Estate, Debtor's counsel, Wells Fargo, Wells Fargo's counsel, the United States Trustee, and all creditors.

END OF DOCUMENT