

APR 04 2006

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 04-63227

James Martin Sudderth and Deborah Gilbert
Sudderth,

CHAPTER 7

Debtors.

JUDGE MASSEY

ORDER GRANTING MOTION TO REOPEN CASE

Debtors move to reopen this Chapter 7 case to add a cause or causes of action that they assert against Susan Hartman, who opposes the motion. The Court held a hearing on the motion on March 21, 2006.

The background facts according to Ms. Hartman are as follows:

The Sudderths filed a tort action in the State Court of Cobb (the "state court action") on January 10, 2005, alleging that [Ms. Hartman], on July 21, 2003, negligently drove her vehicle colliding with the building in which Deborah Sudderth was working, causing injury to Deborah Sudderth and loss of consortium to James Sudderth. Deborah Sudderth reported her injury to her supervisors and began treating immediately for her alleged injuries.

Deborah Sudderth filed a notice of claim to the Georgia State Board of Workers' Compensation immediately as a result of her alleged injury. Plaintiff has not returned to work since the week of the alleged injury.

Debtors did not disclose their claims against Ms. Hartman in their schedules.

Ms. Hartman takes the position that Debtors deliberately omitted mention of the claims against her in their schedules. She contends that the attorney who filed this case for the Debtors also filed the tort action against Ms. Hartman, from which the Court should infer that the failure to

disclose the causes of action was deliberate. She contends that Debtors should not be permitted to reopen the case.

Debtors' new counsel points to the disclosure of the Workers' Compensation claim in the schedules as evidence that Debtors were not attempting to hide their claims. Debtors argue that they are not bankruptcy lawyers and did not realize they were making a mistake.

Ms. Hartman's attorney candidly told the Court that if the schedules are amended, a defense of judicial estoppel may be lost to her client under state law. That is not the law in the federal courts in this Circuit. A debtor who deliberately omits to disclose a cause of action in a bankruptcy case will be estopped to assert the claim in a subsequent civil action. *Barger v. City of Carterville*, 348 F. 3d 1289, 1293-97 (11th Cir. 2003).

The problem this situation presents is that the causes of action Debtors are pursuing against Ms. Hartman in state court do not belong to them at the present time.

Once an asset becomes part of the bankruptcy estate, all rights held by the debtor in the asset are extinguished unless the asset is abandoned back to the debtor pursuant to § 554 of the Bankruptcy Code. See 11 U.S.C. § 554(a)-(c). At the close of the bankruptcy case, property of the estate that is not abandoned under § 554 and that is not administered in the bankruptcy proceedings remains the property of the estate. 11 U.S.C. § 554(d). Failure to list an interest on a bankruptcy schedule leaves that interest in the bankruptcy estate. *Mobility Systems & Equip. Co. v. United States*, 51 Fed.Cl. 233, 236 (Fed.Cl.2001) (citing cases); see *Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524, 525-26 (8th Cir.1991).

Parker v. Wendy's Intern., Inc., 365 F.3d 1268, 1272 (11th Cir. 2004) (footnote omitted). Here, the Chapter 7 Trustee did not administer or abandon Debtors' claims against Ms. Hartman.

Section 350(b) of the Bankruptcy Code governs reopening a bankruptcy case. It provides, “[a] case may be reopened in the case 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).

[W]hen the purpose of the motion to reopen is to add an undisclosed asset, the most important consideration is the benefit to the creditors. *In re Rochester*, 308 B.R. 596, 601 (Bankr.N.D.Ga.2004)(granting debtor's motion to reopen a Chapter 7 case to schedule undisclosed products liability claims, stating that the potential benefit to creditors appears to be the most important factor in the analysis); *In re Lewis*, 273 B.R. 739, 747 (Bankr.N.D.Ga.2001)(granting*451 debtor's motion to reopen to administer an undisclosed interest in a wrongful death action); *See also Daniel*, 205 B.R. 346 (Bankr.N.D.Ga.1997) (granting debtor's motion to reopen to add undisclosed personal injury claim); *Cf. In re Dewberry*, 266 B.R. 916, 921 (Bankr.S.D.Ga.2001) (granting debtor's motion to reopen to add an age discrimination claim, stating that “the test for reopening to administer assets is simply whether the administrative expense and inconvenience outweighs the potential benefit to the estate” and “debtor's good faith is irrelevant”).

In re Upshur, 317 B.R. 446 (2004), 450-451 (Bankr. N.D.Ga. 2004). Nothing in the record of this contested matter proves that Debtors’ causes of action against Ms. Hartman have no value to the estate. Hence, the motion to reopen should be granted. In doing so, the Court makes no determination concerning whether the failure to disclose the causes of action was inadvertent or deliberate and makes no determination with respect to Debtors’ good faith. These could be issues for the state court to the extent it is ever necessary for it to consider them.

Movant contends that if the case is reopened, Debtors should be estopped to claim any of the recovery left over after creditors are paid. This Court may never need to decide the issues raised by this contention and therefore declines to do so at this time.

Upon reopening, the Chapter 7 Trustee should investigate whether this alleged asset has any value and either administer or abandon the asset.

For these reasons, it is

ORDERED that Debtors' motion to reopen this case is GRANTED, and Debtors are directed to amend their schedules to disclose their claim against Ms. Hartman. The U.S. Trustee is directed to appoint or reappoint a trustee.

Dated: April 3, 2006.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE