



**IT IS ORDERED as set forth below:**

**Date: April 27, 2011**

A handwritten signature in black ink, appearing to read "W. H. Drake", is written over a horizontal line.

**W. H. Drake  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
HOLLY MICHELLE COFFEE,	:	07-12822-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEBTOR.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Motion Pursuant to Rule 11 U.S.C. 350(b) to Reopen Case to Seek Immediate Discharge of Student Loan Debt and the Motion for Temporary or Permanent Restraining Order, filed by Holly Michelle Coffee (hereinafter the "Debtor"). This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. See 28 U.S.C. § 1334; 157(b)(2)(A).

The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy

Code on November 17, 2007. Among the Debtor's scheduled unsecured debts was listed a debt of \$10,449 owed to National Student Loan (hereinafter "NSL"). Prior to confirmation of the Debtor's proposed plan, the Debtor requested the conversion of the case to Chapter 7. On July 11, 2008, the Debtor received a Chapter 7 discharge, and the case was closed.

On April 7, 2011, the Debtor filed the instant motion to reopen and for an immediate grant of a discharge of her student loan debt. The Debtor also asks the Court to restrain NSL from its collection actions. According to the Debtor's motion, NSL, or Education Credit Management Corporation, has intercepted her 2009 and 2010 federal and state income tax refunds and has applied said funds to reduce the amount of the debt owed by the Debtor to NSL. Further, NSL has initiated a garnishment against the Debtor's wages, which became effective on April 15, 2011. The Debtor acknowledges that she did not proceed, by way of an adversary proceeding (through a complaint and summons), to obtain a determination that the debt owed to NSL is dischargeable, pursuant to section 523(a)(8). Nonetheless, the Debtor seeks the entry of a temporary restraining order to enjoin NSL's garnishment of her wages while the Court considers the Debtor's, as yet unfiled, request for an undue hardship discharge of her student loan debt.

Under section 350(b) of the Bankruptcy Code, "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). This court has broad discretion to determine whether to reopen a case under section 350(b). *See Faden v. Insurance Co. of N. Am. (In re Faden)*, 96 F.3d 792, 796 (5th Cir.1996); *In re Bianucci*, 4 F.3d 526, 528 (7th Cir.1993). Having considered the Debtor's request, the Court concludes that the case should be reopened to permit Debtor to file a complaint to determine whether she is entitled to a hardship discharge of her student loan debt.<sup>1</sup> The Debtor should note, however, that, to do so, she must file a complaint, obtain a summons, and properly serve these items upon the defendants.

As to the motion for a temporary or permanent restraining order against NSL or Education Credit Management Corporation, it is defective in that such relief must also be requested through a complaint and summons, rather than by motion. *See* FED. R. BANKR. P. 7001(7). Further, the motion has not been served in accordance with Rule 7004(b)(3), which requires service upon a corporation by mailing a copy of the complaint and summons to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. *See* FED. R. BANKR. P. 7004(b)(3).

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<sup>1</sup> The Debtor has not paid the filing fee for the filing of a motion to reopen the case. Such a fee is not required, however, as the motion to reopen was filed for the purpose of obtaining a determination of dischargeability of a debt, pursuant to Rule 4007. *See* 28 U.S.C. § 1330; Appendix - Misc. Fee Schedule (11).

In the exercise of the Court's discretion, and pursuant to section 350(b), the Motion to Reopen is **GRANTED**. The case is hereby reopened to permit the transaction of such business as is permitted by Title 11 of the United States Code. If no further action is taken by any party within 90 days of the entry of this Order, the Clerk of this court shall be authorized to close this case in the usual manner.

The Motion for Temporary or Permanent Restraining Order is **DENIED** without prejudice.

**IT IS FURTHER ORDERED that the hearing initially scheduled on the Debtor's motions for May 13, 2011 WILL NOT BE HELD.**

**END OF DOCUMENT**

**Distribution List**

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