

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON
SEP 30 2008
DOCKET

IN RE:	)	CHAPTER 11
	)	
ANTHONY G. CHRISTOU,	)	
MARIA T. CHRISTOU,	)	CASE NO. 06-68251-MHM
	)	
Debtors.	)	
	)	
IN RE:	)	CHAPTER 7
	)	
ATLAS MORTGAGE CORPORATION,	)	CASE NO. 06-68376-MHM
	)	
Debtor.	)	
	)	
JEFFREY K. KERR, Chapter 11 Trustee,	)	
HARRY PETTIGREW, Chapter 7 Trustee,	)	
	)	
Plaintiffs,	)	
v.	)	ADVERSARY PROCEEDING
	)	NO. 07-6609
APHROULA COUCHELL,	)	
	)	
Defendant.	)	

**ORDER GRANTING MOTION TO AMEND COMPLAINT
AND MOTION TO REOPEN DISCOVERY**

This adversary proceeding is before the court on Plaintiff's motion to amend the complaint and motion to reopen discovery. Defendant opposes both motions. In both motions, Plaintiff alleges that Debtor was indicted November 20, 2006, and convicted February 21, 2008, on a criminal complaint in the U.S. District Court for the Northern

District of Georgia. Prior to the conviction, Debtor refused to answer questions from Plaintiff regarding potential claims of the estate against third parties, citing his Fifth Amendment privilege against self-incrimination. Since his conviction, Debtor still refuses to answer questions under oath, because he is planning to appeal the criminal conviction, but he has answered questions during unsworn interviews.

In the absence of bad faith, dilatory motive, undue prejudice, or futility of amendment, leave to amend a complaint should be granted. *Jameson v. Arrow Co.*, 75 F.3d 1528 (11th Cir. 1996); *Forbus v. Sears Roebuck & Co.*, 30 F. 3d 1402 (11th Cir. 1994); *Hester v. International Union of Operating Engineers*, 941 F. 2d 1574 (11th Cir. 1991). Although an amendment to the complaint may be prejudicial if sought after the close of discovery, in the instant proceeding, Plaintiff also seeks to reopen discovery. Defendant, however, also opposes reopening discovery.

A decision concerning whether to extend time for discovery is within the sound discretion of the trial court. *Patterson v. U.S. Postal Service*, 901 F. 2d 927 (11th Cir. 1990); *Harden v. Adams*, 760 F. 2d 1158 (11th Cir. 1985); *National Independent Theater Exhibitors, Inc. v. Buena Vista Distribution Co.*, 748 F. 2d 602 (11th Cir. 1984). In connection with both the motion to amend and the motion to reopen discovery, Defendant complains primarily of the delay. The length of the delay, however, has been relatively short, reason for the delay provides a sufficient excuse, and Defendant has presented no specific evidence of prejudice except the mere passage of time. *See, In re Cutillo*, 181 B.R.

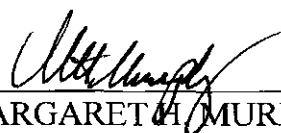
13 (Bankr. N.D. N.Y. 1995); *Whiten v. Murray*, 599 S.E. 2d 346 (Ga. App. 2004). As this action is not criminal, speed is not the most important consideration. Accordingly, it is hereby

ORDERED that Plaintiffs' motions are ***granted***:

- Plaintiff's amendment to the complaint is deemed filed as proposed as of the date of entry of this order. A copy of the amended complaint shall be served by Plaintiff upon Defendant, who may file an answer to the amended complaint within 10 days after service of the amended complaint.
- Discovery is reopened for a period to run three months from the date of entry of this order, subject to extension upon motion for good cause shown.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtors, counsel for Debtors, counsel for Plaintiffs, and counsel for Defendant.

IT IS SO ORDERED, this the 30th day of September, 2008.



MARGARET A. MURPHY
UNITED STATES BANKRUPTCY JUDGE