



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

**Date: June 11, 2013**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

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

In re:	:	CASE NUMBER
	:	
<b>LORNA NEMBHARD BLEDSOE,</b>	:	<b>12-77911-MGD</b>
	:	
Debtor.	:	CHAPTER 7
	:	

**ORDER DENYING EMERGENCY PETITION**

Lorna Nembhard Bledsoe ("Debtor") filed a document entitled, "Emergency Petition for Stay of Previous Discharge Order and Petition to Amend, Reopen, or Consider New Petition Retroactive Transferable to Current Chapter 7 Filing," on her own behalf on June 4, 2013. (Docket No. 20). This is a closed Chapter 7 case in which the Chapter 7 Trustee filed a no asset report, and Debtor received a discharge on February 12, 2013 (Docket No. 18). Debtor appears to be seeking relief as to three parties: JP Morgan Chase Bank ("JPMC") or Chase Bank, Townhomes at Wedgewood Homeowners Association, Inc., and Debtor's counsel, Colleen Golden.

With respect to JPMC, Debtor asserts that JPMC is not the proper party to take any foreclosure action against property listed by Debtor in her schedules at 6422 Wedgeview Drive Tucker, Georgia 30084. JPMC was granted relief from stay in Debtor's case on January 4, 2013 (Docket No. 14). JPMC made out a colorable claim that it was the proper party to seek relief from the automatic stay protecting Debtor's bankruptcy estate. Neither Debtor nor the Chapter 7 Trustee appeared at the hearing on the motion in opposition. Further, Debtor's Statement of Financial Affairs and Schedule D list JPMC as a secured mortgage creditor.

Debtor challenges the secured nature of JPMC's claim and the amount of debt owed on JPMC. These arguments can be made in the proper state court forum. Debtor's Chapter 7 estate has no interest in the property at issue, as evidenced by the Chapter 7 Trustee's no asset report and the absence of opposition to the relief from stay motion. Debtor's individual property rights are not within the jurisdiction of this Court.

It also appears that Debtor seeks to reopen her case to amend her schedules to add Townhomes at Wedgewood Homeowners Association, Inc. ("Townhomes"). It seems Debtor's request to add Townhomes to her schedules is intended to discharge the pre-petition liability owed to Townhomes. It is not required, however, for Townhomes to be included in Debtor's schedules for such debt to be subject to Debtor's discharge. For the reasons explained below, merely adding an omitted creditor to a debtor's schedules in a no-asset, no-bar-date Chapter 7 case does not affect whether or not the debt is covered by the discharge order previously entered in this case.

The discharge of debts generally is governed by section 727 of the Bankruptcy Code. Section 727(b) of the Bankruptcy Code provides in relevant part:

Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the Debtors from all debts that arose before the date of the order

for relief under this chapter.

11 U.S.C. § 727.

Note that the discharge covers all debts that arose prior to the order for relief (the petition date). Section 727(b) says nothing about claims listed in schedules. So, adding a creditor to the schedules in a closed case is neither a necessary nor a sufficient condition to obtain a discharge.

Section 523(a) makes certain types of debts nondischargeable, even though a debtor may obtain a general discharge. As to most of the types of debts described in section 523(a), a creditor is not required to file a complaint to determine dischargeability prior to a deadline. For example, a debt for child support is not dischargeable, and the spouse or child to whom the support is due need take no action against the debtor to achieve that result, although if there is an issue about dischargeability for some reason, the only safe course is to seek a determination of dischargeability in a court of competent jurisdiction before proceeding to collection. The types of debts described in sections 523(a)(2), 523(a)(4), 523(a)(6) and 523(a)(15), however, become nondischargeable only if the creditor files a timely complaint to determine them to be nondischargeable and prevails in the ensuing litigation. These kinds of claims will be discussed in more detail below, but first look at section 523(a)(3).

Section 523(a)(3) deals with the nondischargeability of an unscheduled debt. It provides that a discharge under section 727 does not discharge an individual debtor from any debt -

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the Debtors, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in paragraph (2), (4) or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this

subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request[.]

11 U.S.C. § 523(a)(3). Under this section, the failure to schedule a creditor has consequences only if the creditor is left with insufficient time to file a timely proof of claim or is left with insufficient time to file a timely dischargeability complaint under sections 523(a)(2), 523(a)(4), or 523(a)(6). If there is no deadline to file a proof of claim, section 523(a)(3)(A) would not bar a discharge of inadvertently omitted debt.

In this case, the Court set a deadline for filing a complaint to determine the dischargeability of a debt but did not set a deadline for filing proofs of claims. Thus, debts except those described in sections 523(a)(2), 523(a)(4) or 523(a)(6) owed to any unscheduled creditor were discharged, with the caveat that if a debtor fails to schedule a debt because of fraud or intentional design, as opposed to an honest mistake, that debt would fall within the exception of section 523(a)(3), even though no deadline for filing a claim has passed. *Samuel v. Baitcher (In re Baitcher)*, 781 F.2d 1529, 1534 (11th Cir. 1986).

As indicated, section 523(a)(3)(B) excepts from discharge a debt of the type described in sections 523(a)(2), 523(a)(4) or 523(a)(6) if the creditor holding that debt was not listed on the schedules and if the omission left the creditor with insufficient time to file a timely complaint to determine dischargeability of the debt held by that creditor. Sections 523(a)(2), 523(a)(4) and 523(a)(6) deal with debts that arise from intentional torts. Section 523(c) gives the bankruptcy court exclusive jurisdiction to determine the dischargeability of such debts but makes an exception for debts that fall within section 523(a)(3)(B). "The result [of section 523(a)(3)(B)] is that a debtor who fails to schedule an intentional tort debt before the bar date loses the benefit of both the bar date and

the exclusive jurisdiction of the bankruptcy court." *In re Strano*, 248 B.R. 493, 502 (Bankr. D.N. J. 2000).

In summary, in a no-asset, no-bar-date Chapter 7 case, amending schedules to add omitted creditors does not affect whether or not the debts held by those creditors are discharged. *Judd v. Wolf*, 78 F.3d 110, 111 (3d Cir. 1996) ("We hold that in a no-asset, no-bar date case, dischargeability is unaffected by scheduling"); *Beezley v. California Land Title Co. (In re Beezley)*, 994 F.2d 1433, 1434 (9th Cir. 1992) ("After such a [no-asset, no-bar-date] case has been closed, dischargeability is unaffected by scheduling; amendment of [the debtor's] schedules would thus have been a pointless exercise.")

Although Debtor's failure to include Townhomes in her petition does not affect the discharge of the pre-petition liability owed to it, depending on the facts of the case, post-petition obligations owed to Townhomes may be non-dischargeable under § 523(a)(16)<sup>1</sup> regardless of whether Townhomes was included or amended to be included on Debtor's schedules and petition.

Debtor also seems to state that she seeks to avoid Townhomes' judicial lien pursuant to § 522(f). Townhomes was not served with this motion and such relief cannot be granted at this time.

Debtor alleges that her counsel, Ms. Golden, negligently failed to include all creditors on Debtor's petition. Debtor's alleged claims, if any, may be property of the bankruptcy estate. *Gingold*

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<sup>1</sup> (a) A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt—

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case

*v. Allen*, 272 Ga. App. 653, 655, 613 S.E.2d 173, 175 (2005); 11 U.S.C. § 541(a)(1). Debtor's Emergency Petition does not serve Ms. Golden and any there is no specified request for relief. Accordingly, it is

**ORDERED** that Debtor's Emergency Petition is hereby **DENIED**.

The Clerk is directed to serve a copy of this Order on Debtor, Debtor's counsel, the Chapter 7 Trustee, and the parties listed below.

**END OF DOCUMENT**

Distribution List

G. Alfred Brunavs  
Martin & Brunavs  
2800 North Druid Hills Rd., N.E.  
Building B, Suite 100  
Atlanta, GA 30329

Homeside Properties, Inc., Reg Agent for  
Townhomes at Wedgewood Homeowners Association, Inc.  
2555 Westside Parkway  
Suite 600  
Alpharetta, GA 30004