



IT IS ORDERED as set forth below:

Date: August 26, 2009

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 96-74639

Charles E. Webb,

CHAPTER 13

Debtor.

JUDGE MASSEY

ORDER GRANTING MOTION TO REOPEN CASE

Charles E. Webb, the Debtor in this closed Chapter 13 case, filed a motion to reopen the case on March 27, 2009 for the purpose of amending his schedules to list a parcel of real property that was not listed on Schedule A when this case was filed in 1996. The Court has authority under 11 U.S.C. § 350(b) to reopen a closed case “to accord relief to the debtor, or for other cause.”

Debtor fully performed his Chapter 13 plan, which the Court confirmed on November 20, 2006, paying all allowed claims in the case in full. There is no evidence that any creditor or other party in interest in this case was harmed by his failure to disclose the parcel in question.

The confirmation order, entered on November 20, 1996, provided in relevant part:

5. Any provision in the plan to the contrary notwithstanding, property of the estate shall not revert in the debtor until the earlier of consummation of the plan, discharge of the debtor or dismissal of the case, unless the court orders otherwise.

The Court never ordered otherwise, and property of the estate disclosed by the Debtor reverted in him when he completed his payments to the Trustee.

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).

Hence, the omitted parcel remains property of Mr. Webb's bankruptcy estate.

Counsel for Debtor set a hearing on the motion for May 13, 2009. Attorney Lisa Perlstein appeared at that hearing on behalf of Francisco Vallejos in opposition to the motion. Mr. Webb and Mr. Vallejos are engaged in litigation in the state court concerning the ownership of the parcel of real property that Mr. Webb did not disclose in his schedules. Mr. Vallejos filed a written response to the motion to which Mr. Webb replied. Mr. Vallejos is not a creditor of Mr. Webb and had no part in this case in the 1990's; he does not contend that the omission of the parcel from Debtor's schedules had anything to do with his alleged interest in the parcel. The Court made it clear at the May 13 hearing that an innocent mistake in failing to list an asset in schedules would not bar reopening of the case to correct the record but that a fraudulent omission

would result in denial of the motion. The Court later scheduled an evidentiary hearing for August 25, 2009.

Prior to the August 25 hearing, Mr. Vallejos withdrew his opposition to the motion to reopen. The Court nonetheless held the hearing and required Debtor to show why he failed to list the parcel in question in his schedules.

Based on the findings of fact and conclusions of law stated on the record at the August 25, 2009 hearing, as supplemented by this Order, Debtor's motion to reopen this case is GRANTED because Debtor's failure to disclose the parcel in question was inadvertent and was not "calculated to make a mockery of the judicial system." *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282, 1285 (11th Cir. 2002) (quoting *Salomon Smith Barney, Inc. v. Harvey, M.D.*, 260 F.3d 1302, 1308 (11th Cir.2001)).

Debtor shall have twenty (20) days from entry of this order within which to file an amended Schedule A. Because Debtor fully performed his plan in this case and paid his creditors in full, the Trustee and his bankruptcy estate have no reason, or basis on which, to administer the omitted parcel of real property. Hence, when this case is closed following the filing of an amended Schedule A, the interest in the parcel in question that Debtor had on September 19, 1996, when he filed this Chapter 13 case, will revest in the Debtor.

IT IS SO ORDERED.

END OF ORDER