UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 10-12952
	)	
CHARLES R. LAURIE,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**MEMORANDUM OF OPINION**
	)	**AND ORDER**

The chapter 7 debtor, certain creditors, and now the fiduciary of the debtor's probate estate have engaged in litigation in the state court and the bankruptcy court over the last several years. The fiduciary, Carole Laurie, moves to reopen this case to allow her to request relief against Daniel Ryan, William Doyle, Michael Flament, Patrick D'Angelo, Jamie Serrat, Fred Lick, Jr., and SB2000, LLC for their alleged efforts to collect debts in violation of the debtor's bankruptcy discharge. The respondents oppose the request.[1] After oral argument, the court took the motion under submission.[2]

JURISDICTION

Jurisdiction over this matter exists under 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2)(O), and it is within the court's constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011) and its progeny.

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[1] The respondents are Daniel Ryan, William Doyle, Michael Flament, Patrick D'Angelo, Jamie Serrat, and SB2000, LLC. A response was not filed on behalf of Mr. Lick, who recently died.

[2] Docket 142, 147, 149.

LAW

11 U.S.C. § 350(b)

A bankruptcy case may be reopened "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). The decision whether to reopen a case is submitted to the court's sound discretion. *Smyth v. Edamerica, Inc. (In re Smyth)*, 470 B.R. 459, 461 (B.A.P. 6th Cir. 2012) (*citing Zirnhelt v. Madaj (In re Madaj)*, 149 F.3d 467, 468 (6th Cir. 1998)). "In exercising such discretion, the court 'is to consider the equities of each case with an eye toward the principles which underlie the Bankruptcy Code.'" *In re Caravona*, 347 B.R. 259, 262 (Bankr. N.D. Ohio 2006) (quoting *In re Kapsin*, 265 B.R. 778, 780 (Bankr. N.D. Ohio 2001)). "A bankruptcy court need not reopen a bankruptcy case where reopening would not result in a 'sensible allocation of judicial resources[.]'" *Booth v. National City Bank (In re Booth)*, 242 B.R. 912, 916 (B.A.P. 6th Cir. 2000) (quoting *In re Yoder Co.*, 158 B.R. 99, 101 (Bankr. N.D. Ohio 1993)). The moving party bears the burden of proving that the equities favor reopening the case. *Caravona*, 347 B.R. at 263.

In this case, although the motion was captioned as the "debtor's" motion to reopen, it is the representative of his probate estate who is requesting relief. This means that the issue under § 350(b) is whether there is cause to reopen the case rather than whether it should be reopened to accord relief to the debtor. The respondents' counsel acknowledged at the hearing that the movant has standing to request this relief. *See* FED. R. BANKR. P. 5010 (providing that a case may be reopened on motion of the debtor or other party in interest).

11 U.S.C. § 524(a)

Bankruptcy Code § 524 provides (in relevant part) that:

> (a) A discharge in a case under this title--
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> * * *
>
> (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived . . . .

11 U.S.C. § 524(a)(2). "The obvious purpose [of this provision] is to enjoin the proscribed conduct—and the traditional remedy for violation of an injunction lies in contempt proceedings[.]" *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 421 (6th Cir. 2000).

FACTUAL BACKGROUND TO THE MOTION TO REOPEN[3]

The debtor filed his chapter 7 case on April 2, 2010 and received his discharge on January 28, 2015; the case was then closed.

The State Court Enters Judgment against the Debtor and the Bankruptcy Court finds it Not Dischargeable.

At the time the debtor filed his bankruptcy case, a state court case brought by Daniel Ryan, William Doyle, Michael Flament, Fred Lick, Jr., Patrick D'Angelo, and Jaime Serrat was pending against him.[4] This court lifted the automatic stay to permit those individuals to liquidate their claims in state court. The state court entered summary judgment against the debtor on two counts: (1) strict liability under Ohio's "Blue Sky" securities law; and (2) fraudulently inducing

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[3] This recitation of undisputed facts relies on the exhibits attached to the motion and the parties' briefs. The court also reviewed the state court dockets to obtain updated information.

[4] *Daniel J. Ryan, et al., v. Jeffrey Ambrosio, et al.*, Case No. CV-02-476833 (Cuyahoga County, Ohio, Common Pleas Court).

the plaintiffs to invest in a corporation named Unity Motion. The parties returned to this court, which held the judgment debt non-dischargeable under Bankruptcy Code § 523(a)(2). Memorandum of Opinion and Judgment, *Daniel J. Ryan, et al. v. Charles Laurie (In re Laurie)*, Adv. P. 10-1223 (Bankr. N.D. Ohio March 10, 2014).

Claims Filed in the Bankruptcy Case

Messrs. Ryan, Doyle, Flament, Serrat, and Lick filed claims in the bankruptcy case. The chapter 7 trustee objected on the ground that the debtor did not have personal liability for the debts underlying the claims. In 2012, those parties compromised their dispute in an order that provided for: withdrawal of the claims; payment of $19,000.00 to the chapter 7 estate; and transfer of the estate's right, title, and interest in The Laurie Family Limited Partnership (Partnership) (as well as a number of other entities) to the claimants' designee—SB2000, LLC—effective as of the bankruptcy filing date.[5]

The SB2000, LLC Litigation in State Court

On January 7, 2013, SB2000, LLC filed a state court action against the debtor, the Partnership, Carole Laurie, and Laverne Laurie[6] in which it requested: (1) dissolution and winding up of the Partnership; (2) a buyout of SB2000's interest in that entity; and (3) recovery for the debtor's and the other partners' fraudulent activity as to the Partnership. A second amended complaint filed after the debtor's death added the probate estate as a party, omitted the fraud claim, and added a request for a declaratory judgment as to (a) which documents control the Partnership and (b) SB2000's rights and responsibilities with respect to the Partnership based

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[5] Docket 89.

[6] *SB2000, LLC v. Laurie Family Limited Partnership, et al.*, Case No. CV-13-798976 (Cuyahoga County, Ohio, Common Pleas Court).

on having purchased its assets through the bankruptcy. The defendants answered and asserted as an affirmative defense that the claims are barred by the debtor's discharge. The defendants also moved for summary judgment based in part on this same defense.

The state court denied the parties' motions for summary judgment, and set a final pretrial for June 30, 2016 and a trial for August 8, 2016.

The Fraudulent Conveyance Litigation in State Court

On February 18, 2015, Messrs. Ryan, Doyle, Flament, Serrat, Lick, and Patrick D'Angelo filed a state court action against the debtor's probate estate, the Partnership, Carole Laurie, Laverne Laurie, and the Laurie Trust.[7] The complaint references their state court judgment and this court's non-dischargeability determination, and identifies the lawsuit as "an action to recover, unwind, and rescind fraudulent conveyances between [the debtor] and [the] co-defendants in an effort to evade debts owed to the Plaintiffs, who are judgment creditors of [the debtor]."[8] The complaint sets forth five counts for fraudulent conveyance between the debtor and the named defendants and one count of civil conspiracy.

The debtor's probate estate, along with Laverne Laurie and Carole Laurie, asserted the debtor's bankruptcy discharge as an affirmative defense in their answer. They also filed a counterclaim seeking a declaratory judgment that the debtor's debts related to the alleged fraudulent conveyances were discharged in bankruptcy. The final pretrial in this case is scheduled for June 1, 2016 with the trial set for June 15, 2016.

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[7] *Daniel J. Ryan, et al., v. Laurie Trust, et al.*, Case No. CV-15-840647 (Cuyahoga County, Ohio, Common Pleas Court).

[8] *See* Motion at exh. 5, docket 142.

THE POSITIONS OF THE PARTIES

The movant alleges that the respondents are trying to collect discharged debts through the pending state court cases. She asks this court to reopen the bankruptcy case so that she may request a determination that the debtor's discharge has been violated and obtain various types of relief, arguing that this is the only court that is able to protect the debtor's discharge. The respondents object based on the timing of the motion coming just before the final pretrial and trial dates, and they also contend that the state court is able to address the discharge issue.

DISCUSSION

On consideration, the movant did not meet her burden of showing that cause exists to reopen the case for these reasons:

1. The state court lawsuits have both been pending for significant periods of time and the movant did not provide any explanation for waiting until the last minute to file this motion. This leads the court to conclude that the movant may now be attempting to avoid having the state court decide the issues. Allowing the state court lawsuits to go forward will eliminate any suggestion of forum shopping or procedural manuevering.

2. The complaints are against both the debtor's probate estate and non-debtors. Reopening the case might mean that this court could resolve the respondents' claims against the debtor's probate estate, but it would not resolve matters as to the other state court defendants meaning that both federal and state resources would be used unnecessarily.

3. The movant placed the discharge issue squarely before the state court in both lawsuits, and trial dates have been set.

4. The state court has authority, albeit limited, to construe the discharge and to determine whether the claims being asserted by the respondents in the lawsuits against the

debtor's estate are debts that have been discharged. *Hamilton v. Herr (In re Hamilton)*, 540 F.3d 367, 374 (6th Cir. 2008); *see also* 11 U.S.C. § 1334(b). In exercising that authority the state court cannot modify the discharge order by converting a discharged debt into a non-discharged debt. *Hamilton,* 540 F.3d at 376. There is, however, nothing in the record to suggest that the state court has entered a judgment that would have that effect. If it did so, the judgment would be "void ab initio under § 524(a)[.]" *Id.,* 540 F.3d at 375. Reopening the case would interfere with the state court's exercise of its limited jurisdiction, while declining to reopen the case will allow the state court to exercise that jurisdiction and will avoid unnecessary interference with the state court.

In sum, the movant did not prove that the equities favor reopening the bankruptcy case. Declining to reopen the case will avoid piecemeal litigation and the appearance of procedural maneuvering, conserve judicial resources, and avoid friction between the state and federal courts.

CONCLUSION

For the reasons stated, the objection is sustained and the motion to reopen this case is denied.

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge