THIS OPINION IS NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE	)	CASE NO. 93-51458
	)	
RON YOHO and	)	CHAPTER 7
JOY YOHO,	)	
	)	JUDGE MARILYN SHEA-STONUM
Debtors.	)	
	)	ORDER DENYING MOTION TO
	)	REOPEN BANKRUPTCY CASE

This matter came before the Court on the Motion to Reopen Debtors' Bankruptcy Petition (the "Motion"), filed on February 17, 1999 by Ron and Joy Yoho (together, "Debtors"). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(a) and (b)(1) and by the Standing Order of Reference entered in this District on July 16, 1984.

I. FINDINGS OF FACT

On August 9, 1993, Debtors filed their bankruptcy petition under chapter 7 of the Bankruptcy Code. On December 23, 1993, Debtors received a discharge under 11 U.S.C. § 727. On July 14, 1994, Debtors' case was closed.

In the Motion, Debtors allege that prior to Debtors' bankruptcy filing, Bank One, Akron, N.A. ("Bank One") and GMAC held judgment liens against Debtors' residence. Debtors stated that Bank One's judgment lien was recorded on May 23, 1989, and GMAC's judgment lien was recorded on October 19, 1992. Debtors allege that Bank One renewed its judgment lien on February 25, 1994 and that GMAC renewed its judgment lien on October 10, 1997. Debtors contend that, by renewing their judgment liens after Debtors received their discharge, Bank One and GMAC violated 11 U.S.C. § 524(a)(1) and (2). Debtors seek to reopen their bankruptcy case in order to file a complaint to avoid the renewed judgment liens, to enforce the discharge injunction and to seek sanctions against Bank One and GMAC.

II CONCLUSIONS OF LAW

A. <u>The Statutory Authority to Reopen a Case</u>

Section 350(b) of the Bankruptcy Code provides that "[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). The Court has discretion when evaluating a motion to reopen a case. In re Paul, 194 B.R. 381, 383 (Bankr. D. S.C. 1995)("Whether a bankruptcy court should reopen a case depends upon the circumstances of the individual case; this decision is committed to the court's discretion."); In re Maloy, 176 B.R. 292, 295 (Bankr. M.D. Ga. 1994)(holding that "[r]eopening the case is not a matter of right"); In re Carter, 156 B.R. 768, 770 (Bankr. E.D. Va. 1993)("The right to reopen a case depends upon the circumstances of the individual case and the decision whether to reopen is committed to the court's discretion."). The Court need not grant a motion to reopen a case if reopening the case will serve no purpose. See, e.g., In re Madaj, 149 F.3d 467 (6th Cir. 1998)(affirming order denying motion to reopen case in order for debtor to amend schedules when debt sought to be added to debtor's schedules was already discharged); In re Hanks, 182 B.R. 930, 936 (Bankr. N.D. Ga. 1995)(denying motion to reopen case when debtor sought to reopen case in order to enforce settlement agreement, but bankruptcy court did not have jurisdiction to enforce that agreement). The burden of demonstrating circumstances sufficient to justify reopening a case is on the moving party. In re Hill, 100 B.R. 907 (Bankr. N.D. Ohio 1989); Maloy, 176 B.R. at 295 (when debtor seeks to reopen case, debtor "has a burden of proof under section 350(b) to show what relief is to be accorded to debtor or what other cause exists").

B. The Absence of Justification to Reopen Debtors' Case

In support of the Motion, Debtors allege that, by renewing their judgment liens after Debtors received their discharge, Bank One and GMAC have violated the discharge injunction under 11 U.S.C. § 524(a)(1) and (2) and that Debtors' case should be reopened in order to address these alleged violations.

Section 524(a)(1) provides in pertinent part that a discharge "voids any judgment at any time obtained, to the extent that such judgment is a determination of the *personal liability* of the debtor *with respect to any debt discharged under section 727 . . . of this title* . . . ." 11 U.S.C. § 524(a)(1) (emphasis added). Section 524(a)(2) provides a discharge "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* . . . ." 11 U.S.C. § 524(a)(2) (emphasis added).

Although section 524 extinguishes a creditor's ability to levy against assets of a

debtor which were not subject to that creditor's prepetition lien, section 524 does not eliminate a creditor's rights with respect to assets which were subject to that creditor's prepetition lien. Johnson v. Home State Bank, 501 U.S. 78, 79, 111 S.Ct. 2150, 2154, 115 L.Ed.2d 66 (1991), cited in Dewsnup v. Timm, 502 U.S. 410, 417, 112 S.Ct. 773, 778, 116 L.Ed.2d 903 (1992)(holding that creditor's lien passes through bankruptcy and stays with the real property until the foreclosure). By renewing their judgment liens after Debtors received their discharge, Bank One and GMAC have acted to preserve their prepetition liens against Debtors' property, an *in rem* action which is not the focus of 11 U.S.C. § 524(a)(1) or (a)(2). In re McCorkle, 209 B.R. 773 (Bankr. M..D. Ga. 1997)(holding that United States and State of Georgia did not violate discharge injunction when they renewed tax liens post-discharge).

In support of the Motion, Debtors do not cite cases that involve the type of *in rem* conduct by Bank One and GMAC. In In re Braun, 152 B.R. 466 (N.D. Ohio 1993), cited by Debtors, the creditor held a lien against the debtor's vehicle. After the debtor filed a chapter 7 case and received a discharge, the creditor did not seek to collect against its collateral but instead filed a complaint in municipal court for judgment against the debtor. In response, the debtor filed an adversary action in bankruptcy court, alleging a violation of the discharge injunction pursuant to 11 U.S.C. § 524(a)(2). After a trial, the bankruptcy court found that the municipal court suit was an impermissible *in personam* action against the debtor, as opposed to an *in rem* action with respect to the creditor's collateral, and thus that the creditor's suit constituted an attempt to collect a discharged debt in violation of 11 U.S.C. § 524(a)(2).

Agreeing with the analysis of the bankruptcy court, the district court affirmed the bankruptcy court's holding that the creditor had violated the discharge injunction and explained that:

> [A] valid lien survives the discharge order, and a secured creditor may take any appropriate action to execute such a lien, except an *in personam* action against the debtor. Thus, a creditor may bring an *in rem* proceeding to recover the collateral, but not an *in personam* action seeking to affix a personal money judgment against a discharged debtor.

Braun, 152 B.R. at 470 (citations omitted). In In re Summers, 213 B.R. 825 (Bankr. N.D. Ohio 1996), also cited by Debtors, the creditor attempted to collect on a prepetition default judgment by garnishing the debtor's wages after the debtor received a discharge.

The court held that this garnishment constituted a violation of the discharge injunction. Like the creditor's conduct in Braun, the creditor's action in Summers was not taken to preserve a prepetition lien or to execute against collateral encumbered by a prepetition lien.

Debtors have cited no authority which supports their proposition that renewing a prepetition judgment lien constitutes a violation of the discharge injunction. Rather, the statutory language as well as the holdings of Johnson, Dewsnup and McCorkle contradict that assertion. Once a creditor's lien passes through bankruptcy, a creditor's ministerial action to preserve that lien does not violate the discharge injunction.

Because Debtors would not achieve their stated goals if the Court were to reopen their case, i.e., avoiding the renewed judgment liens of Bank One and GMAC and/or obtaining sanctions for these creditors' putative violations of the discharge injunction, there is insufficient basis to grant the Motion, and the Motion is denied.

IT IS SO ORDERED.

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MARILYN SHEA-STONUM
Bankruptcy Judge

DATED: 4/12/99