IT IS SO ORDERED.

Dated: 10:40 AM June 15 2009

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CASE NO. 01-52885
	)	
VICKIE L. JOHNSON	)	CHAPTER 7
fka VICKIE L. REGAL,	)	
	)	JUDGE MARILYN SHEA-STONUM
DEBTOR(S)	)	
	)	ORDER GRANTING DEBTOR'S MOTION
	)	TO REOPEN [DOCKET #64]

This matter is before the Court on the amended motion of debtor, Vicki Johnson (fka Vicki Regal) ("Ms. Johnson" or "Debtor") to reopen her chapter 7 case [docket #64] (the "Motion to Reopen") and an objection to the Motion to Reopen [docket #70] filed by the City of Cleveland (the "City"). Debtor is requesting that her chapter 7 case be reopened so that she may file and prosecute an action against the City for alleged violations of the discharge injunction imposed by 11 U.S.C. § 524. The City contends that no such violations have occurred and that reopening this chapter 7 case is unnecessary.

I. BACKGROUND FACTS[1]

1. On April 17, 2000, title to property located at 3787 East 71st Street, Cleveland, Ohio 44105 (the "Real Property") was transferred from Timothy Schoenbeck and Shannon McGuire to Bradley J. Regal and recorded as Cuyahoga County Recorder instrument number 200004171150. At the time of that transfer Bradley Regal was married to Ms. Johnson.

2. Also on April 17, 2000, a deed transferring title to the Real Property from Bradley Regal to Ms. Johnson was executed and recorded as Cuyahoga County Recorder instrument number 200004190787.

3. On July 25, 2001 Ms. Johnson and Mr. Regal (as husband and wife) filed a joint, voluntary chapter 7 bankruptcy petition.

4. On August 20, 2001 Beneficial Ohio Inc. ("Beneficial") filed a motion seeking relief from the automatic stay as to and abandonment of the Real Property. That motion was granted by an order entered on September 28, 2001.

5. Mr. Regal and Ms. Johnson received their chapter 7 discharge on January 14, 2002.

6. On April 2, 2003 the City's department of Building and Housing, through its Building Commissioner, determined that structures on the Real Property constituted a public nuisance and issued to Ms. Johnson "Notices of Violation of Housing Ordinances."

7. The chapter 7 trustee filed his Final Report and Account on April 23, 2004 and this case was closed on September 28, 2004.

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[1] Pursuant to a preliminary hearing, Debtor and the City filed, *inter alia*, a list of facts which they agree are not in dispute. *See* Docket #79. These Background Facts are based upon that list and the docket in this case.

8. The Housing Ordinance violations were not cured so on April 3, 2008, the City, through independent contractors, demolished the structures on the Real Property.

9. On June 27, 2008, the City invoiced Ms. Johnson for the demolition costs pursuant to City of Cleveland Ordinance 367.08(C) and Ohio Revised Code § 715.261.

10. Suit for nonpayment of the demolition costs was filed against Ms. Johnson on November 25, 2008 in the Cuyahoga County Court of Common Pleas (the "Collection Action").

11. In addition to filing the Motion to Reopen, Ms. Johnson has also initiated an adversary proceeding (Adv. No. 09-5068) by filing a complaint against, *inter alia*, Bradley Regal, the City and Beneficial seeking a declaratory judgment as to the validity, priority and extent of liens on the Real Property. The initial pre-trial conference in that adversary proceeding has not yet been held.

II. DISCUSSION

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." The decision as to whether to reopen a case is within the sound discretion of the Bankruptcy Court. *Rosinski v. Boyd (In re Rosinski)*, 759 F.2d 539, 540-41 (6th Cir. 1985). Although the relief provided by § 350 is, in general, liberally granted, it does not grant an absolute right to reopen a case especially when so doing would prove to be a futile act. *Zirnhelt v. Madaj (In re Madaj)*, 149 F.3d 467 (6th Cir. 1998); *In re Kaspin*, 265 B.R. 778 (Bankr. N.D.Ohio 2001). The burden of demonstrating that a case should be reopened is on the moving party. *In re Caravona*, 347 B.R. 259, 263 (Bankr. N.D.Ohio 2006).

Ms. Johnson contends that her case should be reopened to allow her to seek redress under § 524(a) of the Bankruptcy Code. Section 524(a)(2) operates as an injunction against the collection

of a debt that was discharged in bankruptcy. When that injunction is violated a debtor may seek recourse through an action for civil contempt and, if established, the injured party may be able to recover damages as a sanction for such contempt. *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 422-23 (6th Cir. 2000); *Chambers v. Greenpoint Credit (In re Chambers)*, 324 B.R. 326, 329 (Bankr.N.D.Ohio 2005).

It is Ms. Johnson's position that the City's right to seek reimbursement for demolition costs is a claim that was discharged in her bankruptcy and that through the Collection Action the City is attempting to recover on a discharged debt. The City contends that the Collection Action deals with an obligation that arose post-petition and is, thus, not prohibited by 11 U.S.C. § 524(a)(2).

A discharge under chapter 7 discharges a debtor from all debts that arose before the date of the order for relief. 11 U.S.C. § 727(b). For purposes of bankruptcy, a "debt" is defined as "liability on a claim" and "claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured . . . ." 11 U.S.C. § 101(5) (defining "claim") and § 101(12) (defining "debt"). This definition of the term "claim" is to be given the broadest possible meaning so that all legal obligations of a debtor will be addressed in a bankruptcy proceeding. *Glance v. Carroll (In re Glance)*, 487 F.3d 317, 320 (6th Cir. 2007). Such definition is not, however, without limit and the fact that an entity may have a claim against a debtor sometime in the future does not automatically mean that such claim exists on the date of the petition.

In general, the existence of a "claim" in bankruptcy is determined by whether claimant possesses a right to payment and whether that right arose prepetition. *In re Federated Dept. Stores, Inc.*, 270 F.3d 994, 1006 (6th Cir. 2001); *In re Gray*, 394 B.R. 900, 903 (Bankr. C.D.Ill. 2008). "A

claim exists for bankruptcy purposes only if, before the filing of the bankruptcy petition, the relationship between the debtor and the creditor contained all of the elements necessary to give rise to a legal obligation and a right to payment under relevant non-bankruptcy law." *In re Gray*, 394 at 903 (*citing In re Antonino,* 241 B.R. 883, 888 (Bankr. N.D.Ill. 1999)).

Whether a claim in bankruptcy encompasses a debtor's future reimbursement obligation to a municipality for post-petition demolition costs of structures on real property owned by debtor as of the petition date has been addressed in other cases. For instance, in *In re Caslin*, 97 B.R. 366 (Bankr. S.D.Ohio 1989), debtor owned two improved parcels of real property when he filed his bankruptcy petition. During the pendency of his case a structure on one of those properties was demolished as a nuisance. The cost for that demolition was held to be a claim in debtor's bankruptcy because the city had sent debtor a "Notice of Nuisance" prior to his bankruptcy filing and the demolition occurred before the case was closed and while the property was still a part of the bankruptcy estate. The cost for demolition of the structure on debtor's other parcel of real property was deemed to not be a claim in debtor's bankruptcy because the issuance of the "Notice of Nuisance" and the actual demolition did not take place until after the bankruptcy case was closed.

In *In re Flood*, 234 B.R. 286 (Bankr. W.D.N.Y. 1999), property owned by debtor was in violation of several city codes when debtor's bankruptcy petition was filed but the city's actions in response to such violations (i.e. structural inspection, issuance of a notice of demolition and demolition) all occurred post-petition. The Court rejected debtor's argument that the city's right to be reimbursed for demolition costs was a claim in his bankruptcy because the code violations existed at the time of filing. Instead the Court found that until the city completed "the essential due process

procedures" required by law, it did not have a right to recover the cost of demolition against debtor as owner of the demolished property and thus, had no claim to discharge through bankruptcy.

Before Ms. Johnson can allege a violation of the § 524 post-discharge injunction she must first demonstrate that the City's right to seek reimbursement for future demolition costs of a structure located on real property owned by her on the petition date was a claim that was discharged in her bankruptcy. Ms. Johnson is entitled to have this case reopened for the limited purpose of presenting evidence on that threshold issue. Should Ms. Johnson be successful in proving that issue she may then request that this case remain open to address whether or not the Collection Action violates § 524.

III. CONCLUSION

Based upon the foregoing the Court finds that the Motion to Reopen should be granted for the *limited purpose* of affording Mr. Johnson the opportunity to present evidence regarding whether the City held a claim for future demolition costs that was discharged in her bankruptcy. The Court further finds that a trustee need not be appointed in the reopened case. FED. R. BANKR. P. 5010.

A telephonic status conference (*to be initiated by the Court*) will be held on **June 18, 2009 at 1:00 pm** to address scheduling. If counsel for Ms. Johnson and counsel for the City will not be at the telephone number listed in their pleadings, they must contact the Court by not later than **12:00 noon on the day prior to the scheduled status conference date** to supply the telephone number at which he or she can be reached. The provisions set forth in Judge Shea-Stonum's memorandum regarding the use of cellular telephones for pre-trial conferences (found on the Court's web site www.ohnb.uscourts.gov) shall apply to the telephonic status conference.

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cc (*via* electronic mail):
SHRILEY SIMON, Counsel for Debtor
CLINTON PRESLAN, Counsel for the City of Cleveland
DANIEL MCDERMOTT, U.S. Trustee, Region 9