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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: ) Case No. 96-12734  
)  
KENNETH J. STATZ, ) Chapter 13  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**

Union Central Life Insurance Co. filed a Motion to Reopen this Chapter 13 case so that it may prosecute an adversary proceeding to revoke the Debtor's discharge. The Debtor opposes that request. (Docket 67, 71, 73). The Motion to Reopen was submitted on the briefs after hearings held on September 10, 2002 and September 24, 2002. For the reasons stated below, the motion is granted.

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J) and (O).

**FACTS**

The Debtor filed this Chapter 13 case on May 24, 1996. Creditor Union Central (1) filed an unsecured nonpriority proof of claim in the amount of \$207,706.01; and (2) objected to the Debtor's proposed plan.<sup>1</sup> (Claims Docket 17; Docket 17). On March 17, 1997, the parties

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<sup>1</sup> Union Central also moved to dismiss the case on the ground that the Debtor did not meet the Chapter 13 eligibility requirements. *See* 11 U.S.C. § 109(e). That motion was denied. (Docket 18, 30).

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entered into a “Contingent Settlement Agreement and Mutual Release of Claims” and Union Central withdrew its plan objection. (Docket entry of 5/20/97). The Debtor’s modified plan was confirmed by an order entered on June 27, 1997. (Docket 48). The confirmed plan provides for a 1% payment to unsecured creditors.<sup>2</sup> Additionally, the confirmed plan provides that:

Union Central Life Insurance Company shall be paid a stipulated claim of \$15,000.00 pro-rata under the Plan in settlement of objection to confirmation, pursuant to the hearing held on March 6, 1997.

Union Central did not file a proof of claim for the \$15,000.00 stipulated amount. Ultimately, the Chapter 13 Trustee distributed \$2,077.06 to Union Central, which represented 1% of its filed claim. Union Central did not receive any other payments under the plan.

On July 12, 2002, the Chapter 13 Trustee filed a motion to release the Debtor’s wages and enter discharge. (Docket 60). The Trustee’s motion was granted and the Debtor received a discharge by order entered on July 18, 2001. (Docket 61, 62). The Chapter 13 Trustee filed a Final Report and Account on December 19, 2001. The final decree was entered on June 24, 2002 and the case was closed on June 25, 2001.

Union Central filed an adversary proceeding on July 16, 2002 which requests revocation of the Debtor’s discharge under 11 U.S.C. § 1328(e) because it was not paid the stipulated \$15,000.00 and asserts that the “Debtor has obtained the discharge with respect to Union Central by fraud.” (Exhibit A at ¶ 10, Motion to Reopen). The adversary proceeding has been held in abeyance pending this ruling on Union Central’s Motion to Reopen.

**DISCUSSION**

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<sup>2</sup> The Debtor’s plan was modified on another issue after confirmation. (Docket 51, 52 ).

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Bankruptcy Code § 350(b) provides that a case may be reopened “to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b). The issue here is whether the Debtor’s case should be reopened to allow Union Central to prosecute its action for revocation of the Debtor’s discharge. Union Central, as the moving party, bears the burden of demonstrating cause to reopen. *See In re Cloninger*, 209 B.R. 125, 126 (Bankr. E.D. Ark. 1997). *See also, Zirnhelt v. Madaj (In re Madaj)*, 149 F.3d 467 (6th Cir. 1998) (requiring debtors as the moving parties to establish cause to reopen).

Union Central argues that cause exists to reopen the case because it was not paid the \$15,000.00 stipulated amount and the Debtor obtained his discharge by fraud. Revocation of a Chapter 13 debtor’s discharge: (1) must be requested before one year after the discharge is entered; and (2) is appropriate when the discharge was obtained by fraud and the requesting party did not know of the fraud until after the discharge was entered.<sup>3</sup> Union Central’s motion to reopen is timely because the revocation request included in the adversary proceeding was made within the one year period set out in § 1328(e). The Debtor argues that Union Central does not meet the second element of §1328 which is that the discharge was obtained by fraud. The adversary complaint, however, makes these allegations of fraud:

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<sup>3</sup> 11 U.S.C. § 1328(e) provides:

- (e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if –
  - (1) such discharge was obtained by the debtor through fraud; and
  - (2) the requesting party did not know of such fraud until after such discharge was granted.

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4. On June 25, 1996, Statz filed his proposed Chapter 13 Plan treating the debt he owed to Union Central as unsecured and dischargeable.
5. Union Central filed an objection to confirmation of Debtor's Plan as the amount due Debtor to Union Central was non-dischargeable and because Debtor's Plan was not proposed in good faith.
6. On March 13, 1997, the parties agreed to a settlement in the amount of \$15,000.00 to be paid outside the Plan during the pendency of the Plan. A copy of the Settlement Agreement is attached hereto as Exhibit A.
7. Debtor did not pay Union Central \$15,000.00 during the pendency of the Plan.
8. Debtor has affirmed to this Court that he has made all payments required by the Plan in order to obtain a discharge even though the Debtor was aware that he had not paid Union Central the \$15,000 provided for by the Plan.

(Exhibit A, Motion to Reopen). It is, therefore, clear that Union Central has alleged fraud.

The inquiry at this point is not whether Union Central will win its adversary proceeding. The question, instead, is whether Union Central has filed a timely complaint which potentially states a claim for revocation of the Debtor's discharge under § 1328(e). Union Central has done so, which meets its burden of proving cause to reopen the Chapter 13 case. Whether Union Central will succeed in obtaining a revocation of discharge will be decided at a later date. The Court finds that the best course is to reopen the case, permit the Debtor and Union Central to present their evidence, and consider the dispute on the merits rather than on the statements of counsel.

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Finally, the Debtor also argues that Union Central was not paid the stipulated \$15,000.00 as a result of its own neglect. The existence of that factual issue, however, supports the conclusion that this dispute should not be resolved in the context of a motion to reopen.

**CONCLUSION**

Union Central's Motion to Reopen is granted for the reasons stated. A separate order will be entered reflecting this decision.

Date: 16 Dec 2002

Pat E. Morgenstern-Clarren  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Timothy McGarry, Esq.  
Alexander Jurczenko, Esq.  
Craig Shopneck, Trustee

By: Joyce L. Gordon, Secretary

Date: 12/16/02

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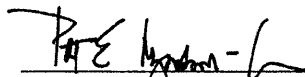
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In re: ) Case No. 96-12734  
)  
KENNETH J. STATZ, ) Chapter 13  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **ORDER**

For the reasons stated in the Memorandum of Opinion filed this same date, Union Central Life Insurance Company's Motion to Reopen this case is granted. (Docket 67).

IT IS SO ORDERED.

Date: 16 Dec 2002

  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Timothy McGarry, Esq.  
Alexander Jurczenko, Esq.  
Craig Shopneck, Trustee

By: Joyce L. Gordon, Secretary

Date: 12/16/02