

**This opinion is not intended for publication**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re: ) Case No. 02-16696  
)  
ANTHONY VELOTTA and ) Chapter 7  
ERIN VELOTTA, )  
) Judge Arthur I. Harris  
Debtors. )

ORDER GRANTING MOTION TO REOPEN CASE AND  
REFUNDING FILING FEES PAID IN ERROR

This matter came before the Court on February 25, 2003, on the motion (Docket #16) of Marlin Pickens to reopen the debtors' bankruptcy case. James B. Koplow appeared on behalf of Marlin Pickens, and Denise B. Workum appeared on behalf of Nationwide Mutual Insurance Company (Nationwide).

According to his motion and the representations of counsel in open court, Pickens seeks to reopen the debtors' bankruptcy case in order to obtain leave to continue a pending state court action (case number unknown; filed in the Cuyahoga County Common Pleas Court on July 30, 2002) against the debtors for injuries that Pickens sustained on August 2, 2000, when debtors' pit bull dog allegedly bit him. Pickens seeks to pursue his action against the debtors in name only – *i.e.*, only as against the amount of insurance issued by Nationwide which was in effect on August 2, 2000. Neither the debtors nor the debtors' insurance company has opposed the relief requested in Pickens's motion. As explained more

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fully below, to the extent that debtors' bankruptcy discharge is deemed to interfere with the prosecution of Pickens's state court action, Pickens's motion to reopen debtors' case is GRANTED. **In addition, the Clerk of Courts is hereby directed to refund to James B. Koplow the sum of \$155.00, which represents filing fees erroneously paid to the Court.**

On June 20, 2002, the debtors filed a petition under Chapter 7 of the Bankruptcy Code. The meeting of creditors, pursuant to § 341 of the Bankruptcy Code, took place on August 13, 2002, at which time the Trustee filed what is known as a "no asset" report. On October 22, 2002, the debtors' case was closed because the Court found that the bankruptcy estate had been fully administered.

A court may reopen a case for cause. *See* 11 U.S.C. § 350(b) ("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."). "It is generally agreed that the debtor's discharge does not affect the liability of the debtor's insurer for damages caused by the debtor and that the creditor may seek to recover from the insurer." *Collier on Bankruptcy* (15th rev. ed.) at ¶ 524.05. *See, e.g., In re Edgeworth*, 993 F.2d 114 (3d Cir. 1993); *Green v. Welsh*, 956 F.2d 30 (2d Cir. 1992); *In re Shondel*, 95 F.2d 1301, 1306 (7th Cir. 1991); *In re Jet Florida Systems, Inc.*,

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883 F.2d 970 (11th Cir. 1989); *In re Rodgers*, 266 B.R. 834, 837 (Bankr. W.D. Tenn. 2001); *In re Doar*, 234 B.R. 203 (Bankr. N.D. Ga. 1999); *In re Harrison*, 206 B.R. 910, (Bankr. E.D. Tenn. 1997); *In re Doughty*, 195 B.R. 1, 4 (Bankr. D. Me. 1996); *In re Dorner*, 125 B.R. 198 (Bankr. N.D. Ohio 1991). *Cf. In re White Motor Credit*, 761 F.2d 270 (6th Cir. 1985) (untimely claimants in Chapter 11 case barred from proceeding against debtor's insurers).<sup>1</sup> Courts are split, however, about whether relief from the discharge injunction must be sought or whether the injunction simply does not apply to an action in which the plaintiff explicitly waives any right to collect a monetary recovery from the debtor. *See generally*

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<sup>1</sup> It is unclear whether the Sixth Circuit's decision in *White Motor Credit* stands for the proposition that the discharge injunction bars a creditor who seeks to proceed against a discharged debtor for the sole purpose of recovering against the debtor's insurer. While several bankruptcy courts within the Sixth Circuit have distinguished *White Motor Credit* or have simply not followed it, *see Rodgers*, 266 B.R. at 837; *Harrison*, 206 B.R. at 912; *Dorner*, 125 B.R. at 201, an unpublished Sixth Circuit decision seems to interpret *White Motor Credit* as barring such suits against a debtor's insurer, at least absent the creditor taking steps to set aside or modify the automatic stay or discharge injunction in the bankruptcy case. *See Moor v. Madison County Sheriff's Dept.*, 30 Fed. Appx. 417, 419 (No. 00-6004) (6th Cir. Feb. 15, 2002) ("Moor's request for a rule that a creditor can proceed nominally against a debtor is inconsistent with the law of this Circuit. *See In re White Motor Credit, supra.*"). To the extent that the prosecution of Pickens's state court action might be seen as being in conflict with at least one court's interpretation of *White Motor Credit*, this Court deems it prudent, especially in the absence of objection by the debtors or by Nationwide, to allow modification of the discharge injunction in this bankruptcy case.

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*Collier on Bankruptcy* (15th rev. ed.) at ¶ 524.05. *See also Green v. Welsh*, 956 F.2d at 33-34 (collecting cases).

Given the debtors' discharge and that Pickens seeks recovery only from the insurance policy issued by Nationwide, the Court finds cause for this case to be reopened. In addition, to the extent that debtors' discharge is deemed to interfere with the prosecution of Pickens's state court action against the debtors in name only – *i.e.*, only as against the amount of insurance issued by Nationwide which was in effect on August 2, 2000, the permanent injunction is hereby modified for cause. It is expressly understood, however, that any judgment in favor of Pickens and against the debtors cannot modify the debtors' previous discharge from personal liability for this debt.

In addition, the Clerk of Courts will issue a check in the amount of \$155.00 payable to the order of James B. Koplw, which represents filings fees erroneously paid in connection with the motion to reopen. Paragraph 11 of Judicial Conference Schedule of Fees (Bankruptcy Court Miscellaneous Fee Schedule) states that

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[f]or filing a motion to reopen a Bankruptcy Code case, a fee shall be collected in the same amount as the filing fee prescribed by 28 U.S.C. § 1930(a) for commencing a new case on the date of reopening, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets.

Because Pickens's motion was "related to" the debtors' discharge, no filing fee was necessary, and such fees should be repaid to debtors' counsel.

Upon this Order becoming final, the Clerk of Court is hereby authorized to reclose this case.

IT IS SO ORDERED.

/s/ Arthur I. Harris      03/04/2003  
Arthur I. Harris  
United States Bankruptcy Judge