

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 03-11509
)
 DOUGLAS A. KIRK,) Chapter 7
)
 Debtor.) Judge Arthur I. Harris

ORDER DENYING MOTION TO REOPEN CASE TO ADD NEW CREDITORS

Before the Court is the debtor's motion to reopen his Chapter 7 case to add new creditors (Docket #9). In his motion, the debtor requests the Court reopen his case to allow him to amend his schedules to include debts omitted from the original petition. The debtor states that the omission of the debts was inadvertent. For the reasons that follow, the Debtor's motion is denied.

On February 10, 2003, the debtor filed his Chapter 7 bankruptcy case. On May 7, 2003, the Chapter 7 Trustee filed a report stating that this is a no-asset case (Docket #5). On May 15, 2003, the order of discharge was entered (Docket #6). On May 19, 2003, this case was closed. On October 10, 2003, the debtor filed his motion to reopen the case.

The Court has reviewed the case file, docket, debtor's motion, and relevant case law. Based upon that review, the Court finds that it is unnecessary to reopen the debtor's no-asset Chapter 7 case to amend the schedules in order to obtain a

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discharge of the previously omitted debts. Pursuant to the decision of the Sixth Circuit in *Zirnhelt v. Madaj, (In re Madaj)*, 149 F. 3d 467(6th Cir. 1998), reopening a Chapter 7 no-asset case merely to schedule an omitted, and otherwise dischargeable, debt is a useless and unnecessary gesture. In *Zirnhelt* the Court faced facts similar to the present case and stated “the reopening of Debtors’ Chapter 7 case to permit the amendment of the schedules can have no effect whatsoever. The debt in question, listed or not, is discharged.” 149 F. 3d at 472. Accordingly, in this Chapter 7 no-asset case, the omitted debts, if otherwise dischargeable, were discharged when the order of discharge was entered on May 15, 2003.¹

Therefore, the debtor’s motion to reopen his no-asset Chapter 7 case is denied. **If the debtor paid any fees related to the motion to reopen, the Clerk**

¹ If there is a dispute as to the nondischargeable nature of any omitted debt, the debtor and creditor are both free to pursue the issue of nondischargeability by moving to reopen the case and filing an adversary proceeding in the Bankruptcy Court or by pursuing an action for a declaratory judgment in state court. *See* 11 U.S.C. §§ 350 (b), 523(a)(3) and Fed. R. Bankr. P. 4007(b). *See also* L. Helbling & C. Klein, *The Emerging Harmless Innocent Omission Defense to Nondischargeability Under Bankruptcy Code § 523(a)(3)(A): Making Sense Of The Confusion Over Reopening Cases And Amending Schedules To Add Omitted Debts*, 69 Am. Bankr. L.J. 33, 44-45, 59-63 (1995).

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of Court is ordered to refund the fees to the debtor, as the case will not be
reopened.

IT IS SO ORDERED.

/s/ Arthur I. Harris 10/21/2003
Arthur I. Harris
United States Bankruptcy Judge