
In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)
) Chapter 7 Case
JIMMY FRANKLIN ROLLINS, JR.)
KATHY DAWN ROLLINS) Number 92-20321
)
Debtors)

**ORDER REOPENING NO-ASSET CHAPTER 7 CASE
TO ADD OMITTED CREDITOR**

The Debtors have filed a Motion in accordance with 11 U.S.C. Section 350(b) seeking to reopen the above-captioned case to add an omitted creditor. The Court has considered the facts of this case and finds that the Debtors have carried their burden of showing absence of fraud or intentional design in connection with their failure to schedule a debt owing to Mark Bishop. The omission was inadvertent and Mark Bishop was not intentionally left off their schedules. In accordance with the holding in Matter of Baitcher, 781 F.2d 1529, 1534 (11th Cir. 1986), the case may be reopened to accord relief to the Debtors.

While it is evident that Debtors neglected to bring the pendency of this claim to this Court's attention and seek to reopen his case for a significant period of time

after Mark Bishop, the claimant, began to pursue his remedies under South Carolina law, nevertheless the evidence at the hearing was clear that the Debtors have made no payment to Mr. Bishop since late 1989 or early 1990. Their bankruptcy case was thereafter filed in May 1992, approximately 30 months after the last payment made to Bishop. There was no evidence indicating that for that 30 month period Bishop had engaged in any collection efforts which would put the Debtors on notice that he still considered himself to have a claim against the Debtors and the Debtors testified that they believed the debt had been satisfied as of the time he went out of business. Obviously, Mr. Bishop contests that contention, but there was no evidence to indicate that the Debtors were on actual notice of the pendency of any claim when they prepared their schedules and omitted this debt. Accordingly, for the purposes of this motion, I find that there was no fraud practiced by Debtors when they omitted this debt from their schedules and that Debtors are entitled to reopen their case in order to seek further relief. However, because the creditor, Mark Bishop, was not notified in 1992 that the case was filed, he retains the right to bring an action under 11 U.S.C. Section 523(a)(3) to challenge the dischargeability of this particular debt. *See Reese v. NCNB National Bank*, 133 B.R. 245 (Bankr. M.D.Fla. 1991).

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of September, 1995.