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

In the matter of: )  
) Chapter 7 Case  
MELROSE ELISA WILLIAMS )  
JOSEPH WILLIAMS ) Number 93-41657  
)  
*Debtors* )

**ORDER ON MOTION FOR RECONSIDERATION**

In the above Motion, Debtors assert that this Court's previous Order of September 1, 1995, is in error principally because the Court failed to consider the effect of 11 U.S.C. Section 521(1) which provides as follows:

The debtor shall--

(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs;

Debtors' Schedule "B" - Personal Property, Item 33, which calls for the revealing of all other personal property of any kind, read only as follows: "Pending Personal Injury Case". There

was no indication as to whether the asset was that of the husband, the wife, or jointly held property and there was no assignment of the market value of the Debtors' interest in Schedule "B" or anywhere else. As alluded to in this Court's prior Order, Debtors failed to claim that asset as exempt in Schedule "C" until they filed their Motion to Reopen and an amendment to their claim of exemption on June 2, 1995. This Court granted the Debtors' exemption, and denied the claim for attorneys' fees. Debtors now request the Court to reconsider its previous motion and declare that the personal injury suit was "abandoned" by the trustee.<sup>1</sup>

Debtors contend that, because this personal injury claim was scheduled in accordance with Section 521, at the time the case was closed the property was by operation of law abandoned to the Debtor pursuant to the provisions of 11 U.S.C. Section 554(c) which provides as follows:

(c) Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

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<sup>1</sup> The practical effect of granting this motion would be to allow the claim for attorneys' fees because this Court would no longer have jurisdiction over an "abandoned" asset.

11 U.S.C. §554(c). Because of the language of Section 554(c), Debtors argue that the asset should be considered "administered for purposes of 11 U.S.C. Section 350 which refers to the reopening of cases." Reading these two sections together, Debtors argue that, because the case was closed after the asset was scheduled, the property was automatically abandoned to the Debtors and indeed, on the face of it, the Code is capable of such a construction. Debtors' argument fails for several reasons, however.

First, as pointed out in Debtors' Motion to Reopen filed May 30, 1995, "said case was closed prematurely while the Debtors pursued a personal injury claim which is subject to the jurisdiction of this Court." Clearly, the trustee had not affirmatively abandoned this asset and this Court's Order reopening the case recites that it was closed due to administrative error and that no filing fee was due from the Debtor.

Furthermore, Debtors clearly have misinterpreted 11 U.S.C. Section 350(b) which provides:

(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.

(emphasis added) 11 U.S.C. §350(b). On May 30, 1995, Debtors filed their Motion to Reopen in order to permit the filing of an amendment to Schedule "C" and a claim of

exemption in the settlement proceeds totaling \$6,227.50. Based on this sequence it is clear that the case was reopened upon Debtors' request so that Debtors could be "accorded relief" within the meaning of Section 350(b) and to correct an administrative error. While Debtors' construction of Sections 521 and 350 might prevent a creditor from moving to reopen a case by excluding, as a ground for reopening, the administration of assets, this case was clearly reopened at the instance of Debtors under the "accord relief" phrase of Section 350. Therefore, the case was not reopened for the purpose of administering a properly scheduled asset which would arguably violate 11 U.S.C. Section 554(c).

Moreover, once the reopening was sought and obtained by the Debtors, the Court's ruling in this case is governed by what the applicable law is in reference to an open case. The Debtors simply cannot have it both ways. They cannot initiate and obtain the reopening of a case and then claim the benefits which arguably might flow to them if the case had remained closed. The argument that the asset had been administered might be a defense to a motion to reopen, but once reopened that temporary case status is irrelevant.

Finally, I observe, without the necessity of deciding, that the vague manner in which the asset was scheduled, the omission of any indication as to whether it was a claim of the husband, the wife, or held jointly and an omission of any numerical value may not constitute a sufficient scheduling of the asset in order to fall under the protection of Sections

521 and 554.

The remainder of Debtors' Motion takes issue with some of the language in the Court's Order dealing with what I believe the practical effect of excusing counsel's failure to follow the dictates of the Bankruptcy Code and Rules in regard to the prosecution of this action and the settlement of the same might be. Debtors' motion contains an only slightly veiled threat that the "failure of this Court to follow the Bankruptcy Code will only encourage those attorneys who are inclined to flout the Court's authority to do just that." The Motion also argues that the Court has based its decision on speculation as to what may occur in an unknown case, by unknown parties, at an unknown time.

Counsel misreads the Court's opinion. It is counsel that failed to follow the Bankruptcy Code and Rules. The Court is fully justified and supported in ordering the turnover of the fees which counsel has attempted, and continues to attempt, to recover without any Court authority or approval.

Counsel may believe that the result of this ruling will be counterproductive and that counsel in some unknown case at an unknown time may "flout" the Court's authority and attempt to conceal their representation of a debtor. I have not undertaken to pursue this matter any further because of my conclusion at page 6 of the opinion: "Counsel is well

known to the Court and I have no doubt that counsel's acts were not undertaken in bad faith. They nevertheless were unauthorized at the time she acted, and I will not exercise the discretion to retroactively approve her appointment or her fees." However, let the message be clear. Any counsel who intentionally "flouts the Court's authority" will be dealt with severely. This Court would consider that contemptuous behavior, the subject of sanctions which could include disbarment in this Court, and the subject of report of an ethical violation to the State Bar of Georgia.<sup>2</sup>

The Motion for Reconsideration is denied.

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<sup>2</sup> Lawyers practicing before this Court are bound by the American Bar Association's Model Rules of Professional Conduct. *See* Local Rule 505(d). The Rules contain provisions covering such contemptuous behavior. *See also* Rules and Regulations for the Organization of Government of the State Bar of Georgia, Part IV, Chapter 1, Standards 4, 31(a), and 36.

Standard 4 reads as follows:

A lawyer shall not engage in professional conduct involving dishonesty, fraud, deceit, or wilful misrepresentation. A violation of this standard may be punished by disbarment.

Standard 31(a) reads as follows:

A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

Standard 36 reads as follows:

A lawyer shall not continue multiple employment if the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under Standard 37. A violation of this standard may be punished by disbarment.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS  
THE ORDER OF THIS COURT that the Motion for Reconsideration is DENIED.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of September, 1995.