

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

**FILED**  
Lucinda B. Rauback, Clerk  
United States Bankruptcy Court  
Savannah, Georgia  
By Ibarnard at 11:42 am, Sep 06, 2013

In the matter of:	)	
	)	Chapter 7 Case
PAUL H. EWALDSEN, JR.	)	
	)	
	)	Number <u>10-41011</u>
<i>Debtor</i>	)	

**ORDER ON DEBTOR’S MOTION TO REOPEN CASE**

Before the Court is Debtor’s Motion to Reopen his Chapter 7 Case.

Dckt. No. 39. Debtor filed his bankruptcy petition on May 10, 2010, and received a discharge on November 23, 2010. Dckt. Nos. 1 and 36. On January 7, 2011, a Final Decree was entered and the case was closed. Dckt. No. 38. On August 1, 2013, Debtor filed a Motion to Reopen his Chapter 7 case to allow him to amend his Schedule F to add two contingent, unliquidated and disputed claims. Dckt. No. 39.

This matter came on for hearing on August 27, 2013. At the hearing, Debtor’s counsel informed the Court that Debtor is involved in state court litigation with Charles B. Miller (“Miller”) and Charles Perkins Dubee, II (“Dubee”) and wishes to add their claims against him to Debtor’s bankruptcy schedules. The Court allowed Debtor ten days to file a post-hearing brief, which he timely submitted on August 28, 2013, and later

filed with the Court. Dckt. No. 44. Debtor attached to his letter brief Miller's and Dubee's complaint against Debtor, which was filed in the State Court of Chatham County on March 25, 2013.<sup>1</sup> No party has raised an objection to Debtor's Motion to Reopen.

Bankruptcy Rule 5010 states that a case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Bankruptcy Code. FED. R. BANKR. P. 5010. The Court has discretion to reopen a bankruptcy case "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b); In re Strickland, 285 B.R. 537, 539 (Bankr. S.D. Ga. 2001) (Davis, J.). The Debtor bears the burden to show cause for reopening the case. In re D'Antignac, 2013 WL 1084214, \*5 (Bankr. S.D. Ga. 2013) (Barrett, J.). A "debtor's desire to amend schedules to include creditors is ordinarily sufficient cause to reopen absent some harm or prejudice to the omitted creditor." In re Garrett, 266 B.R. 910, 913 (Bankr. S.D. Ga. 2001) (Davis, J.) (citing In re McDaniel, 217 B.R. 348, 352 (Bankr. N.D. Ga. 1998)). "Harm or prejudice" arises where a creditor is precluded from participating in the case's distribution or is unable to challenge the dischargeability of the debtor's obligation. *Id.* Where a debtor

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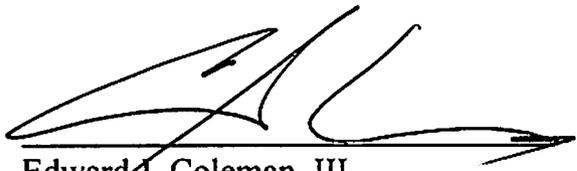
<sup>1</sup>The Court takes judicial notice of Miller and Dubee's complaint in state court. See In re Clark, slip copy, 2010 WL 8545153, at \*2 (Bankr. S.D. Ga. 2010) (Davis, J.) (taking judicial notice of the contents of a complaint filed superior court not for the truth of the matters asserted in the other litigation, but to establish the fact of such litigation) (citing U.S. v. Jones, 29 F.3d 1549, 1553 (11th Cir. 1994)). The Court also takes judicial notice of Miller's and Dubee's bankruptcy cases in the Southern District of Georgia (Case Nos. 10-40475 and 09-42537, respectively) and the pleadings therein. See FED. R. EVID. 201; see also Cash Inn of Dade, Inc. v. Metropolitan Dade County, 938 F.2d 1239 (11th Cir. 1991) (court may take judicial notice of public records within its files relating to a particular case before it or to other related cases).

seeks to reopen a case and amend his schedules, the debtor must prove the absence of any intentional design or fraudulent omission. *In re Baitcher*, 781 F.2d 1529, 1533 (11th Cir. 1986).

The Court concludes that Debtor has met his burden to show cause for reopening his Chapter 7 case. Miller and Dubee did not file their complaint against him until well after his Chapter 7 case was closed. Further, Dubee has filed a Motion to Reopen his own bankruptcy case to add his claim against Debtor to his Schedule B. Case No. 09-42537, Dckt. No. 189. Thus, the Court concludes that the failure of Debtor to list Miller and Dubee as creditors on his original schedules was not fraudulent or intentional. Accordingly, in its discretion, the Court finds that Debtor's case may be reopened.

ORDER

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that Debtor's Motion to Reopen Case is GRANTED.



Edward J. Coleman, III  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 6<sup>th</sup> day of September, 2013.