

This insurance coverage expired in March of 1988. At renewal time, the Debtor and Bill Woods of Raulerson Insurance Agency of Saint Marys discussed the possibility of the Debtor purchasing insurance from him. Bill Woods assured the Debtor that Raulerson Insurance Agency could provide the Debtor with insurance for less than the \$6,000 premium he had paid in the previous year. On or about April 1, 1988, the Debtor paid a \$1,600 binder to Bill Woods and was told that insurance was bound. The Debtor did not receive a policy, nor did he receive any bill for the balance due.

2) On May 25, 1988, the Debtor filed a voluntary Chapter 7 petition in this court. The Debtor's petition was a no asset Chapter 7 case. He ceased doing business on or about that date. The Debtor scheduled \$175,142 in secured debt, and \$88,786.93 in unsecured debt for a total debt of \$272,608.93. The Debtor neglected to list the Raulerson Insurance Agency as a creditor.

3) The first indication that the Debtor may have owed Raulerson Insurance Agency was the receipt of a letter dated September 14, 1988, approximately three weeks before his discharge was entered, which indicated a balance due for the unpaid premium. The Debtor was under the impression that he owed

no monies to Raulerson Insurance Agency because he had previously paid a \$1,600 binder, did not receive a copy of an insurance policy, and did not receive a statement of the amount owing until September 14, 1988.

CONCLUSIONS OF LAW

11 U.S.C. Section 350(b) provides in relevant part that: "A case may be reopened . . . to accord relief to the debtor . . . ". The language of the statute is permissive, giving discretion to the court whether to reopen the case. Hawkins v. Landmark Finance Co., 727 F.2d 324, 326 (4th Cir. 1984). In deciding whether to exercise the discretion vested in me, consideration should be given to whether "(1) the debtor's failure to schedule a debt was because of an unintentional and honest mistake, due to inadvertence, and not fraud or intentional design; or (2) reopening would not result in an inequitable result which would irreparably prejudice the creditor." In the matter of Brenda Paulette Davis White, Case No. 587-00156, 9 (Bankr. S.D.Ga. March 16, 1989). "This approach assures that 'fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done'." Id. at 10 quoting In the matter of

Baitcher, 781 F.2d 1529, 1533 (11th Cir. 1986).

The case sub judicio is a no asset Chapter 7 case in which the Debtor seeks to reopen for the purpose of adding an omitted unsecured creditor. The evidence presented in this case is overwhelming that the Debtor's failure to schedule the debt was at the very most an unintentional and honest mistake due to inadvertence, and not fraud or intentional design. Although Raulerson continually tried to paint the Debtor's actions as manipulative and deceptive, replete with fraud and intentional design, the evidence presented at the hearing does not bear out these assertions.¹ In light of the fact that the Debtor neither received a policy nor any bill for the balance due from Raulerson Insurance Agency before he filed his petition, it

¹ Raulerson made much ado about the fact that the Debtor did not tell anyone that he was filing a petition. There is no authority which would suggest that the Debtor is under an affirmative obligation to make a pre-petition announcement to put all creditors on notice of a debtor's intention to file a petition. Such a rule could only accelerate creditors pre-petition race to the courthouse steps, and would be antithetical to the breathing spell and fresh start policies of the Bankruptcy Code. Raulerson's assertion that the Debtor surreptitiously moved out of the premises after papering the windows and installing a remodeling sign is utterly without merit. The evidence presented was clear that it was the lessor, not the Debtor, who papered the windows and put the remodeling sign therein after the Debtor had surrendered the keys to the premises to the lessor.

is evident that the Debtor's failure to schedule the Raulerson debt was because of an unintentional and honest mistake, due to inadvertence, and not fraud or intentional design. Not having received a policy or a bill, would strongly suggest that no policy was in effect and that no monies were owing. Even if a policy was in effect and money was owing, it would not have been unreasonable for the Debtor to assume that a \$1,600 binder paid on or about April 1, 1988, would be more than sufficient to cover any premiums due between April 1, 1988 and May 25, 1988² and that the policy had subsequently lapsed because of the Debtor's failure to make additional premium payments.

Accordingly, I conclude that the Debtor's failure to schedule Raulerson Insurance Agency was because of an unintentional and honest mistake, due to inadvertence, and not fraud or intentional design.

Further, reopening would not result in an inequitable result which would irreparable prejudice the creditor. See: White, supra at 16. Any prejudice which

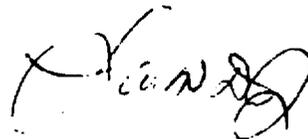
² This assumption would be especially appropriate in light of the fact that the Debtor had been told by Raulerson's agent, Mr. Billy Woods, that the cost of insurance with Raulerson Insurance Agency would be less than the \$6,000 in premium which he paid for the preceding year.

Raulerson Insurance Agency may have suffered by reopening is cured by a conditional order giving the Raulerson Insurance Agency a reasonable opportunity to file a complaint objecting to the Debtors' discharge. Accordingly, the Debtors' case is reopened.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Debtors' Motion to Reopen Case Number 288-00287 is granted.

IT IS FURTHER ORDERED that Raulerson Insurance Agency shall have thirty (30) days from the date of this Order to file an action under 11 U.S.C. Section 727 or Section 523, should it believe that sufficient grounds exist to support such an action.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 20th day of June, 1989.