

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

In the matter of:

STUART M. ALTMAN
SS#254-82-4911
f/d/b/a Newcastle Liquors
Tax ID#58-1537388
f/d/b/a Glynn Package Store
Tax ID#58-164680

Debtor

Chapter 7 Case

Number 89-20442

FILED

at 12 O'clock & 13 min. PM

Date 5/24/91

MEMORANDUM AND ORDER
ON MOTION TO REOPEN CASE

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *POB*

On February 7, 1991, a hearing was held upon the Debtor's Motion to Reopen his case and Objection filed by Mr. Jim Bennison. Upon consideration of the evidence adduced at trial, the briefs and other documentation submitted by the parties and applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Debtor filed a case under Chapter 7 of the Bankruptcy Code with this Court on August 22, 1989. Item 2(c) of the Statement of Financial Affairs for Debtor Not Engaged in Business attached to the Debtor's August, 1989, petition lists the Debtor's interest in a

partnership in the Glynn Package Store. On Schedule A-3, Creditors Having Unsecured Claims Without Priority, the Debtor listed Joe Hale as co-signer and former partner for an unascertained debt amount. The Debtor's Chapter 7 case was closed on December 22, 1989, as a "no-asset" case.

On November 8, 1990, a Judgment was entered in the Superior Court of Glynn County holding the Debtor jointly and severally liable with Joe Hale for breach of contract on a note in conjunction with a loan from Jim Bennison ("Bennison") to the Debtor and the Debtor's partnership in the sum of \$30,000.00. The Judgment was in the amount of \$36,300.00 plus further accrued interest, attorney's fees, and costs of litigation.

On December 21, 1990, the Debtor filed the present Motion to Reopen Case, alleging that "through inadvertence, unintentional design, and misunderstanding, Jim Bennison was omitted from the list of creditors." The Debtor's Motion further alleged that Jim Bennison claims to have loaned the partnership of the Debtor and Joe Hale, d/b/a Glynn Liquors, the sum of \$30,000.00 on or about April 20, 1988, and that the partnership was dissolved in August, 1988. The Debtor alleged that Joe Hale had assumed the debt in August and that the Debtor was under the impression that a "hold harmless" agreement existed which relieved him of any responsibility for the debt.

Bennison tendered an affidavit dated April 26, 1989, and executed by the Debtor which acknowledged that Bennison had loaned the money to Glynn Liquors which operated as a partnership between the Debtor and Hale.

CONCLUSIONS OF LAW

11 U.S.C. Section 350(b) provides in relevant part "[a] case may be reopened . . . to accord relief to the debtor . . ." The language of Section 350(b) is permissive, giving the court discretion in determining whether to reopen a case. Hawkins v. Landmark Finance Co., 727 F.2d 324, 326 (4th Cir. 1984). In determining whether to reopen a case, consideration should be given to:

- (1) Whether 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) Whether reopening the case would result in an inequitable result which would irreparably prejudice the objecting creditor.

Matter of Brenda Paulette Davis White, Ch. 7 Case No. 587-00156, Slip. Op. at 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 Matter of Baitcher, 781 F.2d 1529, 1533 (11th Cir. 1986).]

The case *sub judice* is a no-asset Chapter 7 case which the Debtor seeks to reopen for the purpose of scheduling a judgment creditor's debt. There has been no showing that the exclusion of the Bennison debt was either fraudulent or intentional. Moreover, Mr. Bennison has not been deprived of participating in any distribution of assets of the estate as there were none. However, Mr. Bennison was harmed to the extent that he incurred legal expenses in attempting to collect the debt from the time he should have received notice of the filing (August 27, 1989, allowing three days for mail) until the time he actually received such notice. This harm can easily be remedied by conditioning the reopening of the Debtor's case

upon the payment of the reasonable legal fees incurred by Mr. Bennison up to the time of his receipt of notice. Mr. Bennison's attorney shall prepare and file within thirty (30) days a detailed fee application, evidencing attorney's fees and court costs incurred since August 27, 1989, and serve the Debtor and counsel with a copy. A determination of the reasonableness of these fees will be made by the Court.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Debtor, Stuart M. Altman, shall have leave to reopen his Chapter 7 case conditioned upon his paying the reasonable fees incurred by Jim Bennison in collecting his debt during the period in which he should have had notice of the Debtor's filing but for the Debtor's failure to list Mr. Bennison on his Schedules, in an amount to be established by subsequent order.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 23 day of May, 1991.