UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:	)	
	)	
MICHAEL SHAWN BARNES,	)	Case No. 20-11510-BFK
	)	Chapter 7
	)	
Debtor.	)	
	)	

ORDER GRANTING DEBTOR'S MOTION TO REOPEN

This matter comes before the Court on the Debtor's Motion to Reopen his bankruptcy case. Docket No. 14. Loudoun Medical Group, P.C. and Reena Patel (together, "the Objecting Parties") filed an Opposition to the Motion. Docket No. 17. The Debtor filed a Reply Memorandum. Docket No. 18. The Court heard the parties' arguments on July 13, 2021. For the reasons stated below, the Court will grant the Motion.

Findings of Fact

The Court makes the following findings of fact:

A. The Debtor's Bankruptcy Case.

1. On June 24, 2020 ("the Petition Date"), the Debtor filed a Voluntary Petition under Chapter 7 with this Court. Docket No. 1.

2. In his Schedules, the Debtor did not disclose any personal injury, tort, or malpractice claims, nor did he claim an exemption in any such claims. *Id*., Schedules B, C.

3. The case was a "no asset case," that is, the Clerk advised the creditors that it appeared there would be no assets for distribution to the creditors and, therefore, it was unnecessary to file proofs of claim. Docket No. 5.

4. The Chapter 7 Trustee filed a Report of No Distribution after conducting a meeting of creditors. Docket No. 10.

5. The Debtor received a discharge, and the case was closed on October 8, 2020. Docket Nos. 11, 13.

B. The Loudoun County Action.

6. On December 9, 2020, the Debtor filed a Complaint in the Circuit Court of Loudoun County, Virginia, against the Objecting Parties. Docket No. 17, Ex. 1. The Complaint alleged that, as a result of a prescribing decision made by Ms. Patel on February 12, 2020, he suffered damage to his liver. *Id*. at ¶¶ 12-32. He further alleged that by April 15, 2020, he was in liver failure and that he was rushed to Georgetown University Hospital. *Id*. at ¶ 33.

7. The Objecting Parties moved to dismiss the State court case based on an alleged lack of standing.[1] Docket No. 17, Ex. 3

8. On May 6, 2021, the Circuit Court entered a Final Order of Dismissal Without Prejudice. *Id.*[2]

C. The Debtor Moves to Reopen his Case.

9. The Debtor filed his Motion to Reopen this case on June 22, 2021. Docket No. 14.

Conclusions of Law

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Order of Reference entered by the District Court for this district on August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) (matters concerning the administration of the estate).

[1] In the Fourth Circuit, this inquiry would be characterized as whether the Debtor is the real party in interest under Rule 17. *Martineau v. Weir*, 934 F.3d 385, 391 n.3 (4th Cir. 2019). The Court understands that the State courts usually refer to the issue as one of standing.

[2] The Objecting Parties also submitted to this Court the Debtor's Answers to Interrogatories in the State Court in which the Debtor stated under oath that he filed this case "in October 2019," which was not accurate. Docket No. 17, Ex. 2.

I. Motions to Reopen.

Bankruptcy Code Section 350(b) provides that a closed case may be reopened "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). A decision whether or not to reopen a bankruptcy case is committed to the Court's discretion. *Hawkins v. Landmark Fin. Co*., 727 F.2d 324, 326 (4th Cir. 1984). The Court generally should avoid ruling on the underlying merits of a dispute in connection with a motion to reopen. *In re Conner*, No. 12-72146, 2014 WL 879639, at *1 (Bankr. W.D. Va. Mar. 5, 2014); *In re Jones*, 367 B.R. 564, 567 (Bankr. E.D. Va. 2007).

The reopening of a case does not afford the parties any substantive relief; rather, reopening provides an opportunity for further relief. *Horizon Aviation of Va., Inc. v. Alexander (In re Alexander)*, 296 B.R. 380, 382 (E.D. Va. 2003); *In re Clary*, 440 B.R. 122, 123 (Bankr. E.D. Va. 2010) *quoting Reid v. Richardson*, 304 F.2d 351, 355 (4th Cir. 1962). On the other hand, the Court should not reopen a case where no relief can be accorded to the parties and reopening would be a futile act. *In re Conner*, 2014 WL 879639, at *1; *In re Cutright*, No. 08-70160-SCS, 2012 WL 1945703, at *4 (Bankr. E.D. Va. May 30, 2012); *In re Potes*, 336 B.R. 731, 732 (Bankr. E.D. Va. 2005).

Once a case is reopened, the Debtor will be required to file a motion for leave to amend his Schedules, which will require a showing of excusable neglect. *In re Wilmoth*, 412 B.R. 791, 796-97 (Bankr. E.D. Va. 2009). Although Bankruptcy Rule 1009(a) allows amendments "as a matter of course at any time before the case is closed," Judge Huennekens held in *Wilmoth* that this means before the case is closed for the first time. *Id.* Indeed, a "reopened case is not the same as a never-closed case," and Bankruptcy Rule 9006(b)(1) thus requires a showing that the Debtor's failure to amend his schedules before the case was closed the first time resulted from

excusable neglect. *Id*. Other Bankruptcy Courts have agreed. *See In re Libbus*, No. 15-05128, 2018 WL 1470513, at *3 (Bankr. E.D. N.C. Mar. 23, 2018); In *re Benjamin*, 580 B.R. 115, 119 (Bankr. D. N.J. 2018); *In re Awan*, No. 13-71508, 2017 WL 4179816, at *2-3 (Bankr. C.D. Ill. Sept. 20, 2017); *In re Colquitt*, No. 11-80275, 2012 WL 3262764, at *2 (Bankr. S.D. Tex. Aug. 8, 2012).

The undersigned agrees with *Wilmoth* and its progeny. The Debtor in this case will need to file a Motion for leave to amend his Schedules, in which he will be required to make a showing of excusable neglect.

II. The Standing of the Objecting Parties.

Courts considering whether to reopen a bankruptcy case have consistently found that parties who are not creditors, and who object to the reopening of a bankruptcy case on standing or judicial estoppel grounds in an effort to derail non-bankruptcy litigation, do not have standing to object under Section 350(b). *In re Kreutzer*, 249 Fed. App'x 727, 729 (10th Cir. 2007) (malpractice defendant lacked standing); *In re Boyd*, 618 B.R. 133, 157-161 (Bankr. D. S.C. 2020) (defendants in post-petition auto accident case lacked standing); *In re D'Antignac*, No. 05-10620, 2013 WL 1084214, at *1-4 (Bankr. S.D. Ga. Feb. 19, 2013); *In re Phillips*, No. 09-28759, 2012 WL 1232008, at *1-3 (Bankr. D. N.J. Apr. 12, 2012); *Quarles v. Malloy (In re Quarles)*, No. 06-CV-0137, 2007 WL 171913, at *5 (N.D. Okla. Jan. 18, 2007); *see also Nintendo Co. v. Patten (In re Alpex Computer Corp.)*, 71 F.3d 353, 356 (10th Cir. 1995) (limiting, in a Chapter 11 case, the category of those who have standing to object to the reopening of a bankruptcy case to "debtors, creditors, or trustees, each [of which has] a particular and direct stake in reopening [that is] cognizable under the Bankruptcy Code"). The Court agrees with these decisions.

The Court's decision is further guided by District Judge O'Grady's opinion in *Alexandria Surveys Int'l, LLC v. Alexandria Consulting Grp., LLC (In re Alexandria Surveys Int'l, LLC)*, 500 B.R. 817 (E.D. Va. 2013). In *Alexandria Surveys*, Alexandria Consulting Group ("ACG"), filed a motion to reopen the debtor's bankruptcy case to purchase from the Chapter 7 Trustee certain unscheduled assets remaining in the bankruptcy estate. *Id.* at 819. Specifically, ACG sought to purchase the debtor's customer lists, files, web page, and phone and facsimile numbers (none of which were listed in the debtor's Schedules). Relying on the Fourth Circuit's decision in *In re Hutchinson*, 5 F.3d 750, 756 (4th Cir. 1993), Judge O'Grady held that the prospective purchaser was not an "interested party" within the meaning of Section 350(b). *Id*. at 820. Although not directly on point, the prospective purchaser in *Alexandria Surveys* had at least as much of a pecuniary interest in the outcome of the bankruptcy case as the Objecting Parties have in this case.

The Objecting Parties are not creditors in this case. Their only interest in this case is to prevent its reopening, so that the Debtor will continue to lack standing to maintain his malpractice claims against them. The Court agrees with the case law holding that, under these circumstances, the Objecting Parties lack standing. While the Objecting Parties claim to have a pecuniary interest in the outcome of this case, their only interest is in preventing the Debtor from returning to State court. It follows from *Alexandria Surveys* that this is insufficient to make the Objecting Parties "interested parties" with standing to object under Section 350(b). Moreover, the Objecting Parties can still assert their judicial estoppel defense in State court. Although the Objecting Parties argue that their judicial estoppel defense may be impacted by the reopening of this case and by the Debtor scheduling the claim, the Court agrees with the *Boyd* decision that

this kind of interest is "too remote, too hypothetical and too speculative" to establish standing. 618 B.R. at 159.

The Court finds, therefore, that the Objecting Parties lack standing to oppose the Debtor's Motion to Reopen.

III. The Court Will Grant the Motion.

There is indisputably an asset that has not been administered here, the Debtor's malpractice claims against the Objecting Parties. The case, therefore, falls squarely within the terms of Section 350(b). Consistent with the above authorities to the effect that reopening is ministerial in nature and is not intended to affect the parties' substantive rights, the Court will not make any determinations of excusable neglect on the part of the Debtor at this juncture in the case. The case will be reopened, the Debtor will need to move to amend his Schedules B and C, and the Trustee or some other party in interest may object. For now, the Court is only ruling that the case will be reopened to administer a previously unadministered asset. If the Debtor is successful in amending his Schedules (or, even if the Trustee ends up being the real party in interest), the State court will determine whether judicial estoppel applies. *Martineau v. Weir*, 934 F.3d 385, 393 (4th Cir. 2019).

The Court will grant the Debtor's Motion to Reopen.

Conclusion

It is therefore **ORDERED**:

A. The Debtor's Motion to Reopen is granted.

B. The Clerk will mail copies of this Order, or will provide cm-ecf notice of its entry, to the parties below.

Date: Aug 5 2021

Alexandria, Virginia

/s/ Brian F Kenney

Brian F. Kenney
United States Bankruptcy Judge

Entered On Docket:August 5, 2021

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