

MEMORANDUM

TO: All attorneys with bankruptcy consumer cases assigned to my docket

FROM: United States Bankruptcy Judge Pat E. Morgenstern-Clarren

DATE: 15 July 2011

SUBJECT: Reopening cases to file a reaffirmation agreement or to file a motion to avoid a lien

\*\*\*\*\*

The Bankruptcy Code provides that a case may be reopened to administer assets, to accord relief to the debtor, or for other cause. 11 U.S.C. § 350(b). Recently, a number of motions to reopen have been filed to address two situations: the debtor’s desire to enter into a reaffirmation agreement and the debtor’s intention to file a motion to avoid a lien. This memo is to provide guidance about the court’s policies on these issues.

Reaffirmation Agreements

Bankruptcy Code § 524, which governs reaffirmation agreements, has an important temporal requirement as well as numerous substantive requirements. Specifically, a reaffirmation agreement must be “made before the granting of the discharge[.]” 11 U.S.C. § 524(c)(1). If, therefore, debtor’s counsel feels that the discharge may be entered before the parties have completed a reaffirmation agreement, the best course is to file a motion to delay the discharge for 30 days, or whatever period of time suits the particular situation. Counsel may either set the motion on a regular docket with a seven day objection clause, or use the fourteen day notice period provided by Local Bankruptcy Rule 9013-1.

The court will not reopen a case to allow the parties to file a reaffirmation agreement that was made after the discharge was entered. In that case, reopening the case would not provide any relief to the debtor because the proposed reaffirmation agreement is ineffective.

Motions to Avoid Liens

Motions to avoid liens should be filed, where appropriate, as part of the regular responsibilities of debtors’ counsel while the case is open. The court does not accept as an excuse that it “didn’t seem worthwhile” to spend the time to avoid a lien while the case was pending, but months or years later an issue comes up that shows the lien issue should have been addressed. If there is a very short gap between the case closing and the motion to reopen—and if the motion to reopen provides a satisfactory explanation for why the lien issue was not addressed earlier—the court will generally reopen the case. Other than that, the court will not reopen the case to address issues that could and should have been addressed in the ordinary course of the case.

I hope that counsel will add these issues to his or her checklist of matters to be considered. The failure either to obtain an effective reaffirmation agreement, or to avoid a lien where grounds exist to do so, can have serious consequences for debtors and for those who represent them.

As always, thank you for considering these issues.