

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

FILED
TOPEKA

SEP 30 1998

CLERK
U.S. COURT OF BANKRUPTCY
BY *[Signature]* Deputy

In re:

SHERI ANNE CALDWELL,

DEBTOR(S).

CASE NO. 98-40285-7
CHAPTER 7

ORDER ON MOTION TO REOPEN CHAPTER 7 CASE TO ADD CREDITOR

The above-captioned chapter 7 case is before the Court on the motion of the debtor or debtors to reopen the case to add a creditor to the schedules. The Court believes reopening the case for this purpose is unnecessary. Section 727(b) of the Bankruptcy Code provides:

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor *from all debts that arose before the date of the order for relief* under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

11 U.S.C.A. §727(b) (emphasis added). Under this provision, the claim of a creditor whose name was not included in the list of creditors or whose claim was not included in the schedules is still discharged unless some provision in §523 excepts it from the discharge. Claims that are covered by any of the subsections of §523(a) except (2), (4), (6), and (15) are always excepted from the discharge, and notice to the creditor has no affect on that fact. Otherwise, subsection (a)(3) controls whether the claims of creditors whose names were not included in the list of creditors or whose claims were not included in the schedules were discharged. It excepts from the discharge any debt:

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.

Subdivision (A) of this subsection will apply to most debts owed to unlisted, unscheduled creditors, and since all chapter 7 cases in this district are noticed as no-asset cases and most are closed without the discovery of distributable assets, a proof of claim could ordinarily still be timely filed even after the case has been closed because a proof of claim cannot be untimely until an asset notice has been sent to creditors and the time then given for filing claims has passed. Nothing in subsection (a)(3) indicates that adding a creditor to the list or schedules after a case has been closed will have any effect on the discharge of the debt. Consequently, the Court will not grant the motion to reopen this case to add a creditor to the schedules. The Court will consider reopening the case if the debtor or debtors instead want to do so in order to file an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001(6) to obtain a determination of dischargeability under §523(a)(3).

Because it is possible, though extremely unlikely, that assets could be discovered in the future, the Court hereby directs the Clerk's Office to make an entry in the docket for this case showing that this motion was filed and this order was entered, and to place them in the court file. In this way, the creditor's name will be available so that the creditor can be notified with other creditors in the event that distributable assets are discovered in the future and the case is reopened to administer them. This procedure, however, does not require reopening the case, and

the debtor or debtors are not required to pay the case reopening fee. The motion to reopen is hereby denied.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 30 day of September, 1998.


JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **ORDER ON MOTION TO REOPEN CHAPTER 7 CASE TO ADD CREDITOR** deposited in the United States mail, postage prepaid on this 30th day of September, 1998, to the following:

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THE HONORABLE JAMES A. PUSATERI
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