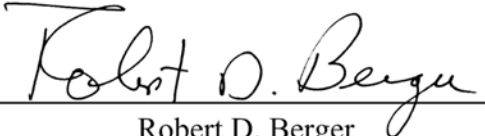


The relief described hereinbelow is **SO ORDERED**.

SIGNED this 28th day of December, 2022.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**TERRY ANAYA and
SHEILA R ANAYA**

Debtors,

Case No. 09-20471

Chapter 7

ORDER GRANTING DEBTORS' MOTION TO REOPEN THE CASE

Debtors, Terry and Shelia Anaya, proceeding *pro se*, seek to reopen their Chapter 7 bankruptcy case to pursue a claim that creditor, NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Shellpoint"), violated the bankruptcy discharge contrary to 11 U.S.C. § 542.

During the initial bankruptcy case, Green Tree Financial held a loan on Debtors' mobile home, which they retained in their bankruptcy and continued to

pay. Debtors obtained a discharge from the bankruptcy court on June 4, 2009, including all debts owed to Green Tree Financial.¹ The mobile home loan was eventually transferred to Shellpoint in 2020.

Debtors allege that Shellpoint improperly reported a delinquency on their credit report to three different credit bureaus. They allege that this prohibited them from closing on a property because of the negative mark on their credit report. Additionally, they allege that the stress from this incident caused Sheila to suffer a heart attack and stroke.

Debtors originally sought relief on these claims in state court in Leavenworth County claiming damages of \$650,000. Shellpoint removed the case to federal district court.² The district court dismissed the case for failure to state a claim under Fed. R. Civ. P. 12(b)(6).³ Debtors appealed the district court's decision, and that appeal is pending in the Tenth Circuit Court of Appeals.⁴

Upon motion of the debtor, a court may reopen a bankruptcy case “to accord relief to the debtor, and for cause.” 11 U.S.C. § 350(b); Fed. R. Bankr. P. 5010. The bankruptcy court has broad discretion to grant such motions. *In re Winkle*, 616 B.R. 896, 900 (Bankr. D.N.M. 2020). In ruling on a motion to reopen, a court is not ruling on the merits of the claim, as reopening of the case is a *quasi*-ministerial act.⁵ As

¹ Doc. 23.

² Case No. 22-CV-2188, Doc. 1.

³ *Id.*, Doc. 20.

⁴ Case No. 22-3241

⁵ A ministerial act is one that is essentially clerical in nature, meaning that the acting government official does not have any discretion or judgment. *In re Fontaine*, 630 B.R. 94, 105 (Bankr. D.N.M. 2019). While § 350 provides the bankruptcy court

such, a motion to reopen should be liberally granted. *In re MacIntyre*, No. 10-32946, 2019 WL 1035683, at *3 (B.A.P. 10th Cir. March 5, 2019). Further, *pro se* pleadings should be construed liberally and are held to less stringent standards than formal pleadings drafted by lawyers. *Hall v. Bellmon*, 935 F.3d 1106, 1110 (10th Cir. 1991).

Here, Debtors have demonstrated cause to reopen the bankruptcy case exists, as a debtor may seek to reopen a case to enforce the discharge injunction. *See e.g.*, *In re Schneider*, 126 B.R. 626 (Bankr. M.D. Fla. 1991). If Shellpoint, as alleged, violated the discharge injunction, Debtors are entitled to relief from this Court under its 11 U.S.C. § 105 powers. The Debtors' motion to reopen the case is GRANTED for the narrow issue of determining whether an order of civil contempt is appropriate for Shellpoint's alleged violation of the discharge injunction.

IT IS SO ORDERED.

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with discretion to reopen a case, the court has a duty to reopen a case to accord relief to the debtor. *See in re Winkle*, 616 B.R. at 900; *in re Mendoza*, 595 B.R. 849, 856 (B.A.P. 10th Cir. 2019).