

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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STEPHEN LEE COCHRAN  
Debtor.

Bankruptcy No. 94-61243KW  
Chapter 7

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### ORDER RE DEBTOR'S MOTION TO REOPEN

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On March 12, 1997, the above-captioned matter came on for hearing pursuant to assignment on Debtor's Motion to Reopen and objection thereto. Debtor Stephen Cochran appeared by Attorney Timothy C. Dunbar. Objector Toni Bender appeared by Attorney Jay P. Roberts. No evidence was presented but the Court was advised as to the background of this matter. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(A).

Debtor filed his Chapter 7 Petition on August 1, 1994. A discharge was entered on November 18, 1994 and the case was closed on November 23, 1994. The Court is advised that Debtor Stephen Lee Cochran and Objector Toni Bender were living together and were engaged to be married at the time of the bankruptcy. They separated approximately six months after the discharge was entered. Afterwards, certain obligations on which Toni Bender was a codebtor were presented against her by creditors. Eventually she filed an action in Iowa District Court seeking judgment against Debtor for \$6,000 arising from debt to American General Finance for which Debtor and Bender were codebtors.

The schedules reflect that Bender was listed as a codebtor, living at Debtor's address, on a claim of American General Finance. Bender acknowledges that she had knowledge of Debtor's bankruptcy case. She asserts that during the pendency of the case, however, there was no reason to participate as a creditor as she was residing with Debtor and they were engaged to be married.

The Court reopened the matter by Order on February 7, 1997 on Debtor's Motion to Reopen. Debtor, thereafter, filed an Amended Schedule of Creditors listing Toni Bender as a creditor. Bender argues that Debtor remains liable for the debt regardless of his discharge. She states Debtor reaffirmed the debt by promising to pay and continuing to make payments after filing his bankruptcy petition.

### CONCLUSIONS OF LAW

Under 350(b), "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." The burden of establishing grounds for reopening the case is on the moving party. In re Daniels, 163 B.R. 893, 895 (Bankr. S.D. Ga. 1994). The decision whether or not to reopen a case lies within the sound discretion of the bankruptcy court. In re Ward, 188 B.R. 398, 399 (Bankr. E.D. Ark. 1995).

The Court acknowledges that this case may present substantive issues. The issue of whether Debtor reaffirmed debt has been raised by Objector Bender. Additionally, underlying issues are always inherent in this type of case concerning whether an unlisted debt is or is not automatically discharged.

This is a no asset Chapter 7 case, and the time for filing claims never expires. Judd v. Wolfe, 78 F.3d, 110, 114 (3d Cir. 1996). An issue is also always presented in this type of case, as to whether a Court should consider reopening a case until or unless a creditor attempts to enforce an unlisted obligation. However, this Court concludes that these issues need not be addressed in this case as this case is controlled by the doctrine of laches.

Courts have recognized that if these types of issues are to be raised, they must be raised expeditiously, or a debtor can be barred from reopening. In so doing, Courts have barred the reopening of cases under the doctrine of laches. In re Guzman, 130 B.R. 489, 492 (Bankr. W.D. Tex. 1991). In Guzman, the debtor learned of the omitted debts four months after the discharge was entered and the case was closed, and moved to reopen the case a year later. Id. The longer the time between closing the case and the motion to reopen, the more compelling the reason for reopening should be. In re Case, 937 F.2d 1014, 1018 (5th Cir. 1991) (denying motion to reopen filed 7 months after case was closed and 2 months after creditor dispute arose).

A motion to reopen a case is excepted from the one year limitation prescribed in Rule 60(b). In re Jackson, 144 B.R. 853, 854 (Bankr. W.D. Ark. 1992). However, laches may justify denial of such a motion. "The strong policy and purpose of the bankruptcy laws in ensuring 'prompt and effectual administration and settlement of the estate' requires that an interested person, including the debtor, act promptly to preserve its rights." Id. (citations omitted). The court in Jackson refused to reopen the case where fourteen months had passed between closing of the case and the motion to reopen, with no reason offered why the motion was filed so late. Id. at 855.

This case has been closed for 2 years and the parties are now for the first time seeking to reopen this case to address these issues. It appears clear that at the time of the entry of discharge, Bender was residing with Debtor and they were anticipating marriage. Therefore, though she had knowledge of the bankruptcy case, she chose not to participate as an active creditor. Likewise, Debtor did not list her as a creditor based on her potential liability as a codebtor. After their relationship terminated six months later and creditors started to pursue Bender, Bender then sought payment from Debtor. This led to Debtor's motion to reopen to list Bender as a creditor.

In this case, too much time has now passed, such that it is inappropriate to reopen this case. The finality of the discharge and closure of the case is important. To allow reopening every time a debtor wishes to list another creditor, even years after the closure, is inappropriate. Therefore, the Motion to Reopen is barred by laches.

**WHEREFORE**, Debtor's Motion to Reopen Bankruptcy Case to Add Creditor is DENIED.

**SO ORDERED** this 24th day of March, 1997.

Paul J. Kilburg  
U.S. Bankruptcy Judge