

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
RUTH E.M. DARDEN,) CASE NO. BK02-80078
)
Debtor(s).) CH. 7

ORDER

Hearing was held in Omaha, Nebraska, on April 4, 2006, on the debtor’s motion to reopen the case (Fil. #6) and resistance by Zweiback Enterprises, L.L.C. (Fil. #10). Ernest Addison, Jr., appeared for the debtor, and John Rogers appeared for Zweiback Enterprises.

Rosen Auto Leasing, Inc., obtained a default judgment of approximately \$5,300 against the debtor in August 2001 in the Douglas County Court. Rosen caused the judgment to be transcribed to Douglas County District Court and thereafter attempted to execute on the judgment. The debtor filed this no-asset Chapter 7 case on January 15, 2002, which stopped the creditor’s collection efforts. The debtor received a bankruptcy discharge in May 2002. The debtor had listed the Rosen judgment in her bankruptcy schedules but did not move to avoid the lien which had attached to her real property. Rosen’s assignee is now attempting to levy on the property, so the debtor moved to reopen the case to deal with the lien.

The Bankruptcy Code permits the reopening of a closed case “to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b).

The reopening of a case is merely a ministerial or mechanical act which allows the court file to be retrieved from the stacks of closed cases to enable the court to receive a new request for relief; the reopening, by itself, has no independent legal significance and determines nothing with respect to the merits of the case. In re Germaine, 152 B.R. 619, 624 (B.A.P. 9th Cir. 1993) (citing In re David, 106 B.R. 126, 128-29 (Bankr. E.D. Mich. 1989) and In re Daniels, 34 B.R. 782 (B.A.P. 9th Cir. 1983)).

It is within the bankruptcy court’s discretion to base its decision to reopen on the particular circumstances and equities of each particular case. Apex Oil Co. v. Sparks (In re Apex Oil Co.), 406 F.3d 538, 542 (8th Cir. 2005).

In this case, it appears the Rosen/Zweiback lien may impair the debtor’s homestead exemption and therefore may be avoidable under 11 U.S.C. § 522(f)(1)(A). The case therefore should be reopened. The debtor may file the appropriate motion to avoid the lien, and the creditor may raise its arguments regarding prejudice and any other grounds for denial of that motion in its resistance. See In re Vaske, ___ B.R. ___, 2006 WL 740673 (Bankr. N.D. Iowa Mar. 20, 2006) (discussing “good cause” for debtor’s delay in filing lien avoidance motion until after discharge, and

whether delay constitutes prejudice to creditor).

IT IS ORDERED the debtor's motion to reopen the case (Fil. #6) is granted.

DATED: April 10, 2006

BY THE COURT:

/s/ Timothy J. Mahoney

Chief Judge

Notice given by the Court to:

*Ernest Addison, Jr.

John Rogers

United States Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.