

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK02-42411
)	
JOHN LOGHRY and)	
ROBYN LOGHRY,)	CH. 7
)	
Debtor(s).)	Filing No. 10, 16, 18

ORDER

Hearing was held in Lincoln, Nebraska, on June 29, 2005, regarding Filing No. 10, Motion to Reopen Chapter 7 Case, filed by the debtors; Filing No. 16, Resistance, filed by Steve and Susan Francisco; and Filing No. 18, Objection, filed by Lexxus International, Inc. Kelly L. Sudbeck appeared for the debtors, Philip Kelly appeared as Chapter 7 trustee, Nicholas Dafney appeared for Steve and Susan Francisco, and W. Eric Wood and Emilio Galvan appeared for Lexxus International, Inc.

This Chapter 7 case was discharged and closed in 2002. Thereafter, the debtors assert that they became aware of claims against Lexxus International, Inc., and Steve and Susan Francisco. They assert that they had not been aware of the claims at the time they filed bankruptcy and therefore did not schedule either of the claims on their bankruptcy schedules. In addition, although they became aware of the claims in September of 2003, neither their attorney nor they realized at that time that they should have attempted to reopen the case and schedule the claim so that the trustee could administer the claim or abandon it.

At some point in time the debtors were sued by Lexxus International, Inc., in a declaratory judgment action filed in the federal district court in Dallas, Texas. In response to such suit, the debtors filed a counterclaim containing numerous paragraphs and claims for relief. The debtors asked for financial damages to be determined in their favor.

The debtors also sued Steve and Susan Francisco in the federal district court in Nebraska requesting monetary damages.

In one or both cases, Mr. Loghry was deposed and acknowledged that he had filed a Chapter 7 bankruptcy case. After investigation, it was determined that he had not listed these claims in the bankruptcy case, so in both the Dallas case and the Nebraska case motions to dismiss the claims of the debtor were filed on the grounds of judicial estoppel.

Those motions to dismiss have not been determined at this time. The alleged judicial estoppel concerns the debtors' failure to list the claims in the bankruptcy case and then to assert the claims in the federal district court cases.

In response to the judicial estoppel assertions, the debtors filed this motion to reopen the Chapter 7 case. Lexxus International and Steve and Susan Francisco objected on the basis that the debtors should not be permitted to first defraud the bankruptcy court and the creditors in the bankruptcy case and then take advantage of such action to benefit themselves with whatever

amount they could collect in the lawsuits.

A hearing was held on the motion to reopen and the objections on June 29, 2005. The Chapter 7 trustee who had been appointed in the bankruptcy case appeared along with the other parties. He orally joined in the motion to reopen so that he could evaluate the claims filed by the debtors in the two federal district court cases and, if he deemed it appropriate, intervene as the real party in interest in either or both of those cases.

The motion to reopen is granted. The claims against Lexxus International, Inc., and Steve and Susan Francisco, whether of value or not, are assets of the Chapter 7 bankruptcy case which have not yet been administered or abandoned. The issues with regard to judicial estoppel claims in both of the federal district court cases can still be appropriately resolved by the federal district courts with the real party in interest before the court. The reopening of the bankruptcy case does not reinstate the automatic stay. The discharge injunction has already been entered and has not been and cannot be revoked at this late date.

Mr. Kelly, the prior Chapter 7 trustee, is reappointed as the Chapter 7 trustee in this case and is directed to take whatever action is appropriate to administer the assets which are the subject matter of the two federal district court lawsuits.

SO ORDERED.

DATED this 30th day of June, 2005.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Kelly L. Sudbeck
Philip Kelly
Nicholas Dafney
W. Eric Wood
Emilio Galvan
U.S. Trustee

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