UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:93-bk-03550-CTC
Chapter 11

PREMIER BENEFIT CAPITAL TRUST,

Debtor.
_____/

MEMORANDUM OPINION DENYING MOTION TO REOPEN CASE AND DENYING APPLICATION TO PROCEED IN FORMA PAUPERIS

This case came on for consideration on a Motion to Reopen Chapter 11 Case (the "Motion") and on Prisoner's Application to Proceed in Forma Pauperis (the "Application") presented for filing by Janice Weeks-Katona (the "Movant/Applicant"). The Movant, a *pro se* prisoner incarcerated in California, wants this bankruptcy case reopened so that she may file an adversary proceeding styled as an interpleader action against Theodore T. Navolio and Harry W. Marrero, Jr., as trustees for the debtor, and Charles S. Stutts, as the receiver appointed by an unidentified sister court. For the reasons stated below, the Court denies the Motion and denies the Application.

The bankruptcy case of the debtor, Premier Benefit Capital Trust, was short lived. The case was commenced on July 19, 1993, with the filing of a voluntary Chapter 11 petition. However, the petition was dismissed and the bankruptcy case was stricken three days later on July 21, 1993. (Doc. No. 5).[1] A Motion for Reconsideration (Doc. No. 7) of the Order Dismissing Case (Doc. No. 5) was filed on July 27, 1993, and noticed for hearing on August 26, 2003; however, the Motion for Reconsideration was withdrawn two days prior to the hearing (Doc. No. 10). Other than summarily dismissing this case after only three days, the Court took no substantive action. The Bankruptcy Court did not administer claims, distribute assets, or even learn the details of the debtor's financial structure or business. For all practical purposes, the case was a "no-go" from the start, and the Court had no involvement in the debtor's past, present, or future financial situation. Nor did the Court have any significant contact with the debtor's creditors, insiders, or the alleged court appointed receiver, Charles. S. Stutts. The case was closed on November 4, 1993 (Doc. No. 12).

Now, approximately thirteen years later, the Movant has filed the instant Motion seeking to reopen the bankruptcy case. The Movant did not include the $1,000 filing fee[2] with her Motion, instead filing the Application accompanied by an unsworn/unnotarized "Affidavit of Truth" and "Certificate of Funds in Prisoner's Account" that was not signed by an authorized officer of the institution in which the Movant is currently incarcerated.

Motion to Reopen. A motion to reopen a bankruptcy case is governed by 11 U.S.C. § 350(b) and Federal Rule of Bankruptcy Procedure 5010. "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." 11 U.S.C. § 350(b). Motions to reopen are made for a variety of reasons, and they can be made by the debtor, the trustee, or any party in interest. In re Upshur, 317 B.R. 446, 450 (Bankr.N.D.Ga.2004) (citing Fed. R. Bankr.P. 5010). The decision to reopen a closed bankruptcy case depends on the circumstances of the individual case, In re Carter, 156 B.R. 768, 770 (Bankr.E.D.Va.1993), and is left to the court's discretion. Upshur, 317 B.R. at 450 (citing Lopez v. Specialty Restaurants Corporation (In re Lopez), 283 B.R. 22, 27 (9th Cir. B.A.P. 2002); In re Rochester, 308 B.R. 596, 600 (Bankr.N.D.Ga.2004); In re Daniel, 205 B.R. 346, 348 (Bankr.N.D.Ga.1997)); In re Garrett, 266 B.R. 910, 912-913 (Bankr.S.D.Ga.2001) (citing In re Alpex Computer Corporation, 71 F.3d 353, 356 (10th Cir.1995) ("While the decision to reopen remains within the broad discretion of the bankruptcy court, ··· it must be tethered to the parameters of § 350(b), or it is an abuse of discretion.")). The moving party has the burden to demonstrate sufficient cause to reopen. In re Winburn, 196 B.R. 894, 897 (Bankr.N.D.Fla.1996) (citing In re Pagan, 59 B.R. 394 (D.P.R.1986)). "As a general proposition, a closed case can be routinely reopened for the limited purpose of according relief to the debtor. It is equally true, however, if reopening the closed case would serve no purpose, it is pointless to reopen the case and the motion should be denied." In re Hunter, 283 B.R. 353, 356 (Bankr.M.D.Fla.2002).

[1] Due to the age of the case, the debtor's bankruptcy case file is stored in archives located off-site. Therefore, at this time, the Court has no knowledge of the particulars of the case beyond the information contained on the electronic docket.

[2] On June 22, 2005, court personnel erroneously informed the Movant in a letter that the reopening fee in this case was $220.

The reasons Movant seeks to reopen the case are difficult to discern from the papers she has presented for filing and, even if properly parsed, are not issues appropriately addressed in a bankruptcy forum. For example, although the Movant states that the purpose of the interpleader action is to "request[] full accounting for purpose of determination of dischargeability of debts," she also states that the bankruptcy case should "be re-opened and reviewed de novo, with intent to file Executor de son torts for willful and malicious injury to [Movant] in multiple occasions and continuing wrongs which include compensatory and punitive damages yet to be determined." (Papers stamped as filed via mail on July 30, 2006). In certain other of her papers presented for filing,[3] the Movant alleges, among other things, that "The District Court in comity with state courts colluded with debt collectors Federal Bureau of Prisons and force-drugged [her] under tortious duress to obtain jurisdiction by coercion to cooperate with counsel in every instance" (p. 6 ¶ 24), and that "Defendants kidnapped [her] and capitulated for Premier Benefit Capital Trust which is the unlawful taking of persons and property to pay a debt." (p. 6. ¶ 21).

In addition, the Movant's true relationship with/connection to the debtor is also difficult to discern with any certainty. In papers received by the Court on July 28, 2006, the Movant identified herself as the PBCT General Trust Manager in 1993, who "indemnified underlying contracts against business risks" but claimed that there was "no commercial insurance to cover acts of war as occurred in the taking of PBCT by unauthorized government agents." In other papers filed on that same date, the Movant included a "List of Creditors Holding 20 Largest Unsecured Claims," an "Offer In Compromise" and a "Notice to PBCT Claimants Execution of Judgment for Final Settlement" purporting to "settle claims arising from the unlawful takeover of PBCT thirteen years ago" and stating that "Courtesy investigators and debt collectors contracted to Internal Revenue Service (IRS) did not have delegated authority from Secretary of US Treasury of Commissioner of Internal Revenue Service for the taking of persons (Jan Weeks-Katona and Jason Spencer Weeks) and property (PBCT) as collateral for payment of assumed unassessed tax/charges to IRS and US Treasury." On July 30, 2006, the Court also received from the Movant a "Notice of Appearance of Trustee" in which the Movant names herself as trustee to the debtor in place of Navolio and Marrero.

The Movant's papers fail to demonstrate sufficient cause to reopen this long ago closed bankruptcy case for the purpose of filing any purported interpleader action or otherwise. This Court did nothing to adjust or review the debts of Premier Benefit Capital Trust during the three days the case was pending thirteen years ago. The Movant has utterly failed to establish any reason this Court should now involve itself in the debtor's ancient financial issues. Reopening the case serves no useful purpose.

Furthermore, the Court cannot determine with any certainty whether the Movant, who is not the debtor, is a creditor or other party in interest who may have standing to reopen the case. Lastly, the bankruptcy court would not be the appropriate forum in which to vindicate much of the wrongs alleged by Movant. Claims for personal injury, kidnapping, coercion and the like are typically resolved by courts other than the bankruptcy court. For these reasons, the Court finds that the Movant has failed to establish cause to reopen this case.

Application to proceed *in forma pauperis*. The Movant also has failed to pay the $1,000 filing fee prescribed to reopen closed Chapter 11 reorganization cases. Instead the Movant asks the Court to waive the filing fee. In the Application, Movant/Applicant seeks to proceed *in forma pauperis* on the Motion and in connection with the adversary pleading she wishes to file. In a letter received by the Court via mail on July 21, 2006, she also offers to pay the reopening and adversary proceeding fees in four equal monthly payments with borrowed funds, if necessary. As stated above, the Application was accompanied by an unsworn/unnotarized "Affidavit of Truth" and "Certificate of Funds in Prisoner's Account" that was not signed by an authorized officer of the institution in which the Movant/Applicant is incarcerated.

Typically, filing fees prescribed by 28 U.S.C. § 1930(a) must be collected when a motion to reopen a bankruptcy case is filed, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. The Guide, Volume 5, Ch. 15, § § 15.03(a) and (c). If a bankruptcy case is reopened for any other purpose, the appropriate fee to be charged is the same as the filing fee in effect for commencing a new case on the date of reopening. Currently, the fee to file a Chapter 11 case is $1,039.[4] The court may waive or defer this fee under appropriate circumstances as

[3] These papers were originally stamped as being filed via mail in Tampa, Florida, on May 30, 2006, and were then forwarded and later received in the Orlando office on July 5, 2006.

[4] The filing fees include a miscellaneous administrative fee of $39.00. The $39.00 is not due when filing a motion to reopen.

determined on a case-by-case basis. The Guide, Volume 5, Ch. 15, § § 15.03(a).

Here, the Movant/Applicant has failed to demonstrate sufficient cause to justify the waiver of the filing fee. Her affidavit was not sworn before an officer authorized to administer oaths. She states she is able to pay a filing fee, albeit over time. More importantly, the Motion lacks any arguable basis in either law or fact and is frivolous as a matter of law. Under these circumstances, the Court will exercise its discretion to deny the Movant's request to waive the filing fee. A separate order consistent with this Memorandum Opinion shall be entered.

DONE AND ORDERED in Orlando, Florida, this 15th day of August, 2006.

/s/ Karen S. Jennemann
KAREN S. JENNEMANN
United States Bankruptcy Judge

Copies provided to:

Debtor: Premier Benefit Capital Trust, 413 West First Street, Sanford, FL

Robert B. Branson, Harry W. "Bill" Marrero, Jr., and Theodore T. Navolio, Premier Benefit Capital Trust, 1803 E. Kaley Street, Orlando, FL 32806

Theodore T. Navolio, c/o Victor D. Martinez, Edquire, 4144 N. Armenia Avenue, Suite 350, Tampa, FL 33607-5447

Harry W. Marraro, c/o David Weisbrod, 601 N. Franklin Street, Suite 610, Tampa, FL 33602

Charles L. Stutts, Esquire, SEC Receiver and Trustee for Debtor Premier Benefit Capital Trust, Holland and Knight Law Firm, 100 North Tampa Street, Suiute 4100, Tampa, FL 33602-3644

Hon. Donald Korb, Chief Counsel, Internal Revenue Service, 1111 Constitution Ave. NW, Washington, DC 20224, Attn: Melva A. Matthews, Technical Services Section, Procedures and Administration, Room 5327

Hon. Robert McCallum, Deputy United States Attorney General, President's Task Force on Corporate Fraud, 950 Pennsylvania Avenue NW, Washington, DC 20530

Movant: Janice Weeks-Katona, c/o FCI Dublin #17493-018, 5701-8th Street, Camp Parks, Dublin, CA 94568