

**United States Bankruptcy Court
Northern District of Illinois
Western Division**

Transmittal Sheet for Opinions for Posting

Will this opinion be Published? No

Bankruptcy Caption: In re Jeremy Curtis Leggo and Jennifer M. Leggo

Bankruptcy No. 10-71124

Adversary Caption: N/A

Adversary No. N/A

Date of Issuance: May 23, 2016

Judge: Thomas M. Lynch

Appearance of Counsel:

Attorneys for Debtor: Darrell L. Jordan, Law Offices of Darrell L. Jordan

Attorney for Creditor: April A. Hulst, Chase and Bylenga PLLC

United States Bankruptcy Court, Northern District of Illinois

NAME OF ASSIGNED JUDGE	Thomas M. Lynch	CASE NO.	10-B-71124
DATE	May 23, 2016	ADV. NO.	
CASE TITLE	In re: Jeremy Curtis Leggo and Jennifer M. Leggo, Debtors.		
TITLE OF ORDER	ORDER		

DOCKET ENTRY TEXT

Store Fronts, Inc.'s Motion to Reopen the Case (ECF No. 36) is DENIED in part and GRANTED in part. This case is reopened so that Store Fronts, Inc. may file an action under 11 U.S.C. § 523(a). This case is not reopened for Store Fronts, Inc. to file an action under 11 U.S.C. § 727. Store Fronts, Inc.'s Motion to Waive the Filing Fee is DENIED. This Order is effective *nunc pro tunc* to April 25, 2016.

+

STATEMENT

Creditor Store Fronts, Inc. seeks to reopen Debtors Jeremy Curtis Leggo and Jennifer M. Leggo's Chapter 7 case to except the Debtors' debt to Store Fronts, Inc. from discharge pursuant to 11 U.S.C. § 523(a)(4) and § 523(a)(3)(B) and to revoke Debtors' discharge pursuant to 11 U.S. C. § 727(a)(4)(A) through § 727(d)(1). (ECF No. 36.) For the reasons set forth below, Store Fronts Inc.'s motions will be denied in part and granted in part.

I. FACTUAL SUMMARY ¹

On July 20, 2009, Store Fronts, Inc. (“Store Fronts”) filed a complaint against Debtor Jeremy Curtis Leggo doing business as B & L Restoration and/or JL Consultants in the 17th Circuit Court of Michigan. (ECF No. 39.) The affidavit of service indicated that Mr. Leggo was personally served with Store Fronts’ complaint. (*Id.*) On October 15, 2009, the state court granted default judgment in favor of Store Fronts and against Mr. Leggo in the amount of \$162,769.88. Notice of the default judgment was mailed to Mr. Leggo on October 21, 2009. (*Id.*)

Debtors filed their Chapter 7 bankruptcy petition on March 10, 2010. Attorney C. David Ward represented the Debtors in their Chapter 7 case. The Debtors did not include Store Fronts’ default judgment in their schedules. On August 3, 2010, Debtors received a discharge. The case was closed on August 6, 2010.

Store Fronts took no action to enforce its judgment until 2015. During this time, Mr. Leggo changed his residence several times, residing in Caledonia, Michigan from 2005 to December 2008, Hampshire, Illinois from December 2008 to February 2010, and Sycamore, Illinois from February 2010 to July 2010. Since August 2010, Debtor has lived in Old Hickory, Tennessee.

Finally in early 2015, Store Fronts brought a collection action against Mr. Leggo in the Court of Davidson County, Tennessee. Attorney Ward claims that he did not learn of Store Fronts’ claim against Mr. Leggo until early 2015. (ECF No. 39.) Store Fronts’ assertion that it was unaware of the Chapter 7 Bankruptcy until after it commenced the Tennessee action is not disputed. The Tennessee action was placed on administrative hold when Store Fronts learned of Mr. Leggo’s bankruptcy. Attorney Ward attached to his affidavit ten letters exchanged between him and Store Fronts’ attorneys between February 2, 2015 and December 14, 2015. In the first two, Mr. Ward sought to have Store Fronts’ Tennessee and Michigan cases against Mr. Leggo dismissed, stating that although Store Fronts’ default judgment was not listed in Debtors’ schedules, “since it was prior to the filing on August 3, 2010, it is still discharged in the Bankruptcy.” Correspondence between February 25, 2015 and July 17, 2015 indicate that the parties discussed settlement. When Store Fronts later hired new counsel to pursue the matter in early December 2015, Mr. Ward wrote to say that he did not represent Mr. Leggo and that all correspondence should be addressed to Mr. Leggo. However, Mr. Ward did not provide details on how Mr. Leggo could be reached.

¹ The following sets forth the Court’s findings of fact as required by Fed. R. Bankr. P. 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such, and to the extent that any conclusions of law constitute findings of fact, they are adopted as such.

On February 1, 2016, Store Fronts filed the current motion to reopen Debtor's bankruptcy case to except the Debtors' debt to Store Fronts from discharge pursuant to 11 U.S.C. § 523(a)(4) and § 523(a)(3)(B) and to revoke Debtors' discharge pursuant to 11 U.S. C. § 727(a)(4)(A) through § 727(d)(1). (ECF No. 36.)

II. JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This is a matter arising under title 11 and is a "core proceeding" under 28 U.S.C. § 157(b)(2). Because matters such as this "stem[] from the bankruptcy itself," this Court has constitutional and statutory authority to enter a final order in this proceeding. *Stern v. Marshall*, 546 U.S. 500 (2011).

III. DISCUSSION

A bankruptcy case may be reopened in the court in which the case was closed to administer assets or for other cause. 11 U.S.C. § 350. The bankruptcy court has broad discretion in deciding whether to reopen a case. *In re Bianucci*, 4 F.3d 526, 528 (7th Cir. 1993). "A bankruptcy judge may consider a number of nonexclusive factors in determining whether to reopen, including (1) the length of time that the case has been closed; (2) whether the debtor would be entitled to relief if the case were reopened; and (3) the availability of nonbankruptcy courts, such as state courts, to entertain the claims." *Redmond v. Fifth Third Bank*, 624 F.3d 793, 798 (7th Cir. 2010).

When deciding whether a motion to reopen is timely, "courts may consider the lack of diligence of the party seeking to reopen and the prejudice to the nonmoving party caused by the delay." *Id.* Here, Debtors received discharge on August 3, 2010, and their bankruptcy case was closed on August 6, 2010. Nevertheless, Store Fronts did not receive notice of Debtors' bankruptcy until February 2015.² Although Store Fronts moved to reopen Debtors' bankruptcy case nearly a year after learning of the bankruptcy, the Court is convinced that nearly five months of this delay is attributable to its efforts to settle with Mr. Ward, who at least at first appeared to hold himself out to represent Mr. Leggo. Further, there is no showing that Debtors are prejudiced by Store Fronts' motion to reopen their case. There is no suggestion that Mr. Leggo was unaware of Store Fronts' default judgment, nor is there suggestion that he incurred extra costs when Store Fronts brought its claim in Michigan

² Store Fronts also explains that its delay in enforcing the default judgment against Mr. Leggo was due to difficulty in locating him. During the time Store Fronts received default judgment and Debtors filed for bankruptcy, Mr. Leggo resided in Hampshire, Illinois. He subsequently moved to Sycamore, Illinois from February 2010 to July 2010. Nevertheless, Mr. Leggo has not moved since August 2010 when he moved to Old Hickory, Tennessee.

and then in Tennessee. On the other hand, correspondence between Mr. Ward and Store Fronts' attorneys suggest the possibility that Store Fronts was being led along by the Debtors regarding settlement until Mr. Ward informed Store Fronts that he was not representing Mr. Leggo in December 2015.

The bankruptcy court must also consider whether the moving party would be entitled to the relief sought if the case were reopened. *Redmond*, 624 F.3d at 798. Here Store Fronts seeks to deny Debtor's discharge pursuant to 11 U.S.C. § 727(a)(4)(A) through 727(d)(1). However, requests for revocation of discharge under section 727(d)(1) must be raised "within one year after such discharge is granted." 11 U.S.C. § 727(e)(1). The Debtors received their discharge on August 3, 2010. Store Fronts' motion filed more than five years later is clearly too late. Further, the creditor's argument that it did not receive notice of Debtor's discharge until after the 727 time period lapsed is unavailing given the explicit language in section 727(e)(1). Accordingly, Store Fronts' motion to reopen the case to revoke discharge under section 727 will be denied. However, Store Fronts' claims for relief under 11 U.S.C. §§ 523(a)(4) and 523(a)(3)(B) is not subject to the time limitation placed on section 727 claims, and may be maintained.

Finally, the bankruptcy court must also consider the availability of other fora. *Redmond*, 624 F.3d at 798. "Bankruptcy courts have exclusive jurisdiction to determine the dischargeability of debts under §§ 523(a)(2), (4) and (6)." *In re Laskero*, 2011 Bankr. LEXIS 3939, at *4 (U.S. Bankr. N.D. Ill. 2011). Here, Store Fronts seeks to bring a dischargeability claim under section 523(a)(4) as well as sections 523(a)(3)(B) and 727 of the Bankruptcy Code. A state court cannot determine all of Store Fronts' claims since it cannot determine the section 523(a)(4) claim. Thus, it appears that this Court is the appropriate forum.

Accordingly, Store Fronts' motion to reopen the case to determine dischargeability of its debt under section 523(a) will be granted.

ENTER:

Thomas M. Lynch
United States Bankruptcy Judge