

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

IN RE)
)
KIMBERLY KAY HESTNESS,) **Case No. 07-20279-TLM**
)
) **Chapter 7**
Debtor.)
_____)

SUMMARY ORDER

The above chapter 7 Debtor, Kimberly Kay Hestness (“Debtor”) filed a chapter 7 petition on June 21, 2007. Doc. No. 1. Objections to discharge under § 727(a) were due by September 17, 2007. Fed. R. Bankr. P. 4004(a). Objections to dischargeability of debts under § 523(c) were due that same date. Fed. R. Bankr. P. 4007(c). *See also* Doc. No. 5 (notice). The record reflects no timely filed complaints under either § 727 or § 523.

The case was noticed to creditors as a no asset case and creditors were advised that no proofs of claim were to be filed. Doc. No. 5. The case was closed as a no asset/no distribution case on October 17, 2007. The case was closed without entry of discharge because Debtor failed to file a “financial management course certification” as required by the Bankruptcy Code and Rules. Doc. No. 16.

Debtor, through counsel, on February 20, 2008, moved under § 350(b) to

reopen her closed case in order to file such a certification and obtain a discharge. Doc. No. 18. Simultaneously with the motion to reopen, Debtor filed a February 20, 2008, amendment of Debtor's schedule F (unsecured creditors), adding four creditors not previously listed or notified of the bankruptcy. Doc. No. 21.

The motion to reopen under § 350(b) is proper and will be granted. By filing the required financial management course certification, Debtor has now remedied the sole defect that led to closing of the case without entry of discharge. Doc. No. 20. A discharge will be granted in due course. However, Debtor's amendment of her schedule F raises different concerns.

This Court in *In re Frederick*, 99.4 I.B.C.R. 178 (Bankr. D. Idaho 1999) and, before that, in *In re Mendiola*, 97.3 I.B.C.R. 77 (Bankr. D. Idaho 1997), addressed the question of reopening a no asset, no claim bar case for the purpose of adding omitted creditors. *Frederick* held that there is no merit to such a motion.

It noted:

[Section] 727(b) discharged all prepetition debts whether or not they were scheduled and that “[s]o far as that section [*i.e.*, § 727(b)] is concerned, a pre-bankruptcy debt is discharged, whether or not it is scheduled.”

99.4 I.B.C.R. at 178 (quoting *Mendiola*, 97.3 I.B.C.R. at 78) (citing *In re Beezley*, 994 F.3d 1433, 1435 (9th Cir. 1993)). *Frederick* further stated, in considering the operation of § 523(a)(3) in conjunction with § 727:

Thus, in a no asset, no [claim] bar date case, if the omitted debt falls within the ambit of 11 U.S.C. § 523(a)(3)(A), it has already been

discharged under 11 U.S.C. § 727(b). If the omitted debt is of a type specified by 11 U.S.C. § 523(a)(3)(B), it has not been discharged, and is non-dischargeable. *In re Beezley*, 994 F.3d 1433, 1434 (9th Cir. 1993).

99.4 I.B.C.R. at 179 (quoting *Mendiola*, 97.3 I.B.C.R. at 78).

Put differently, § 523(a)(3)(B) establishes that a creditor in a no asset/no claim bar date case with a claim falling within § 523(a)(2), (4) or (6) must either be scheduled and given adequate notice of the bar date for filing a dischargeability complaint under § 523(c) and Fed. R. Bankr. P. 4007(c), or have actual knowledge of the case in time to timely file such a complaint. If not, that creditor's claim will not be discharged.

In the context of this case, if any of the four creditors shown on the amended schedule F, Doc. No. 21, has a claim under § 523(a)(2), (4) or (6), that claim will not be discharged, and the amendment does not vary that fact. Conversely, if none of these creditors have such a § 523(a)(2), (4) or (6) claim, then their claims would be discharged under § 727(b) whether or not the Debtor amended the schedule in February, 2008, to list them.

While the factual scenario here is somewhat different from that in *Frederick* and *Mendiola*, the result is the same – the amendment of the schedules has no effect or meaning in connection with discharge of the added creditors' claims.

Upon the foregoing and the balance of the record before the Court, cause appearing:

IT IS ORDERED and this does hereby ORDER that Debtor's motion to
reopen is GRANTED.

DATED: February 22, 2008



A handwritten signature in black ink, reading "Terry L. Myers". The signature is written in a cursive style with a large, prominent "T" and "M".

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE