

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

IN RE: STEPHANIE ROSS DAVIS,

Debtor.

**Case No. 2:14-bk-10591J
(Chapter 7)
(Closed)**

ORDER

Before the Court is the *Motion to Reopen Case and Extend Injunction Pursuant to Section 105 and Section 362* (the “**Motion**”) [Doc. No. 17] filed by Stephanie Ross Davis (the “**Debtor**”) on March 6, 2019, and the *Response to Motion* (the “**Response**”) [Doc. No. 23] filed by Ray Fuller Farms, Inc. d/b/a Fuller Seed & Supply (“**Fuller Seed**”) on March 22, 2019. The matter was set for hearing on May 15, 2019; however, prior to the hearing the parties agreed to have the Court rule on the pleadings without a hearing. May 15, 2019, was set as the date for the Debtor to file a reply to Fuller Seed’s Response. No reply was filed and the Court took the matter under advisement.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The following shall constitute the Court’s findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, made applicable to this contested matter by Federal Rule of Bankruptcy Procedure 9014.

The following is a summary of the undisputed background of the case taken from the parties’ pleadings. The Debtor filed her Chapter 7 bankruptcy petition on February 2, 2014. She listed Fuller Seed as an unsecured creditor holding a debt of over \$73,000.00. She received her

discharge on May 28, 2014, and her bankruptcy case was closed by the bankruptcy clerk's office on June 30, 2014.

On June 5, 2017, Fuller Seed filed a lawsuit against Darrin Davis, individually and d/b/a Lake View Farms (“**Darrin Davis**”), in the Circuit Court of Pulaski County, Arkansas, Case No. 60CV-17-2789. A copy of the state court complaint (the “**Complaint**”) was attached to the Response. One of the exhibits to the Complaint is a credit application and guarantee for payment reflecting Darrin Davis as the applicant with what appears to be his signature at the end of the document. (Response Ex. A, at Ex. A). The Complaint alleges that “[b]etween May 11, 2009, and August 31, 2009, [Fuller Seed] sold goods and merchandise to [Darrin Davis].” (Response Ex. A ¶ 14). The prayer for relief requests judgment in favor of Fuller Seed against Darrin Davis. (Response Ex. A).

The Motion alleges that “Darrin Davis is the husband of [the Debtor] and was such in 2009 and at all points relevant to any interactions with Fuller Seed.” (Motion ¶ 7). The Motion further alleges that Fuller Seed is attempting to “collect from [the Debtor] through her husband Darrin Davis.” (Motion ¶ 11). The Debtor is requesting that the bankruptcy case be reopened “so that she can file an adversary proceeding within this case for the Court to determine whether the automatic stay¹ applies” to the state court action against Darrin Davis. (Motion ¶ 13).

Fuller Seed argues that the Debtor fails to state “sufficient grounds to reopen her case” and the Motion is “premised on a false assumption” that the Debtor’s discharge would inure to

¹ The automatic stay terminated in this case when the Debtor received her discharge on May 28, 2014. *See* 11 U.S.C. § 362(c)(2) (2012) (stating the stay continues until the earliest of the time the case is closed, dismissed, or a discharge is granted or denied). Accordingly, the Court construes the Debtor’s request as one to reopen the case to determine whether the discharge injunction, rather than the automatic stay, applies to the state court action. *See* 11 U.S.C. § 524 (2012).

the benefit of her non-filing spouse. (Response ¶ 5). Fuller Seed cites several reasons the case should not be reopened, including the availability of relief in another forum, lack of bankruptcy court jurisdiction, passage of time, and the lack of available relief if the case is reopened. (Response at 3–10). The Court need only consider Fuller Seed’s first reason: the availability of relief in another forum.

Section 350(b) of the Bankruptcy Code provides that 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) (2012). Whether to grant a motion to reopen a case is within the discretion of the bankruptcy court. *Arleaux v. Arleaux*, 210 B.R. 148, 149 (B.A.P. 8th Cir. 1997), *aff’d per curiam*, 149 F.3d 1186 (8th Cir. 1998).

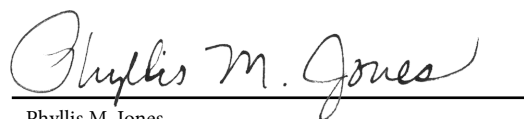
The Court may consider several factors in determining whether cause exists to reopen a bankruptcy case. *Pennington-Thurman v. Bank of Am. N.A. (In re Pennington-Thurman)*, 499 B.R. 329, 331 (B.A.P. 8th Cir. 2013) (citing *In re Wilson*, 492 B.R. 691, 695 (Bankr. S.D.N.Y. 2013)), *aff’d*, 559 F. App’x 600 (8th Cir. 2014). One factor is whether relief is available in another forum. *Apex Oil Co. v. Sparks (In re Apex Oil Co.)*, 406 F.3d 538, 542 (8th Cir. 2005). The Eighth Circuit Court of Appeals has expressly stated that “[t]he availability of relief in an alternative forum is a permissible factor on which to base a decision not to reopen a closed bankruptcy case.” *Id.*

Here, relief is available in another forum. Litigation is already pending in state court between Fuller Seed and Darrin Davis. The state court has jurisdiction to hear and determine the issue of Mr. Davis’s liability and in doing so may determine what effect, if any, the Debtor’s discharge has on Mr. Davis’s liability to Fuller Seed. *See In re Apex Oil Co.*, 406 F.3d at 542 (stating “the related dischargeability issue could be ruled upon in [state court] in light of Apex’s

assertion of a dischargeability defense in the state court action”); *see also* ARK. R. CIV. P. 8(c) (listing “discharge in bankruptcy” as an affirmative defense).

Fuller Seed is not attempting to hold the Debtor liable for her discharged debt but is instead seeking relief against her non-debtor spouse. The discharge injunction in the Debtor’s bankruptcy case does not stop a collection action against her non-filing, non-debtor spouse. Whether Darrin Davis can defend the state court action by arguing that *his* liability on the debt was somehow discharged in *his wife’s* bankruptcy case is a matter that can be decided by the state court. Because the issue may be determined by the state court, relief is available in an alternative forum and this Court need not reopen the Debtor’s bankruptcy case to decide the issue.

For the foregoing reasons, the Debtor’s Motion is DENIED and the case will remain closed.



Phyllis M. Jones
United States Bankruptcy Judge
Dated: 06/21/2019

cc: Mr. James Fitzgerald Valley
Mr. Harry S. Hurst, Jr.
United States Trustee
Debtor