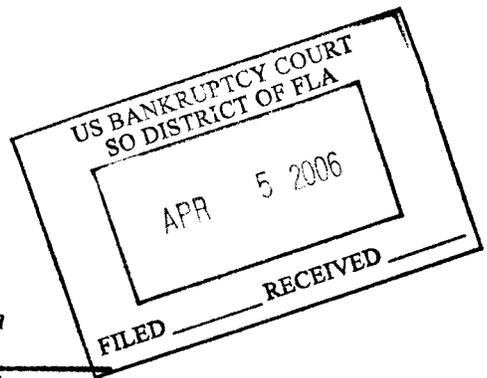


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ORDERED in the Southern District of Florida on April 4, 2006



Robert A. Mark

**Robert A Mark, Chief Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

)) In re:)) CESAR AUGUSTO DE LA ROSA,))) Debtor.))))	CASE NO. 00-18210-BKC-RAM CHAPTER 7
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ORDER DENYING MOTION TO REOPEN CASE

The Court conducted a hearing on March 30, 2006, on Debtor's Motion to Re-Open Case to Add Omitted Creditor ("Motion to Re-Open"). Debtor seeks to add Jose Honorio-Urena ("Urena") as a creditor. Urena obtained a judgment against the Debtor in 1998 in the Circuit Court, Miami-Dade County, Case No. 96-2264-CA-01 (the "State Court Case").

Counsel for Urena appeared at the hearing and objected. The Court has considered the arguments of counsel, the record in this case, the docket information in the State Court Case and relevant

case law. For the reasons that follow, the Motion to Re-Open will be denied.

Factual Findings

A. The State Court Case commenced on February 2, 1996. The docket reflects that an answer was filed by the Debtor. Ultimately, Urena obtained a summary final judgment against the Debtor for \$29,948.54 in August, 1998.

B. The Debtor filed this Chapter 7 case on September 14, 2000. Urena was not listed as a creditor and received no notice of the case. The Debtor received his discharge on December 28, 2000, and the case was closed on December 29, 2000.

C. The docket in the State Court Case reflects efforts to take discovery in aid of execution starting in January, 2001, and continuing, albeit somewhat sporadically, through the present. Significant activity, including garnishment efforts, occurred in February and March of this year. Presumably, these most recent efforts triggered the filing of the Motion to Reopen.

D. Urena would be prejudiced by reopening this case, more than 5 ½ years after it was filed. Prejudice includes, in particular, the costs and fees he has incurred proceeding with collection efforts in the State Court Case.

E. The Debtor knew or should have known of the judgment debt to Urena when he filed his bankruptcy case since he appeared in the State Court Case. Moreover, even if the Debtor inadvertently omitted this judgment creditor from his schedules,

he should have sought to reopen the case as soon as Urena began pursuing collection efforts, not now after several years have passed and Urena has incurred significant fees and expenses continuing his collection efforts.

Discussion

The decision to re-open a case under 11 U.S.C. §350 to add a creditor or seek to avoid a lien is discretionary. In re Bianucci, 4 F.3d 526 (7th Cir. 1993); In re Hunter, 283 B.R. 353 (Bankr. M.D.Fla. 2002). Laches is a well recognized defense and courts often look at the prejudice to the creditor if the case is reopened. Hunter, 283 B.R. at 357.

The Court concludes that Urena will be prejudiced if this case is reopened. Clearly, he has incurred attorneys fees and costs pursuing collection on his judgment. Other courts have denied motions to reopen where, as here, the creditor has incurred court costs and attorneys fees in pursuing claims against a debtor. Bianucci, 4 F.3d at 528; Hawkins v. Landmark Finance Company (In re Hawkins), 727 F.2d 324, 327 (4th Cir. 1984).

Based upon the foregoing findings and conclusions, it is -
ORDERED that the Motion to Re-Open is denied.

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