

SIGNED.

Dated: January 23, 2012



James M. Marlar

James M. Marlar, Chief Bankruptcy Judge

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7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF ARIZONA**

9 In re:

10 JESS WARD PINKSTON,

11 Debtor.

Chapter 7

No. 4:10-bk-31954-JMM

12 **MEMORANDUM DECISION AND ORDER**

13 The Debtor has asked to reopen his bankruptcy case (ECF No. 25). His grounds are not
14 explicit, but the court has enough information upon which it can rule.

15
16 **BACKGROUND AND THE LAW**

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18 This was a no-asset Chapter 7 case, which has been closed. Certain creditor(s), who
19 were not listed on the Schedules, are attempting to collect an alleged student loan debt from
20 Debtor, post-discharge.

21 A case can be reopened "to administer assets, to accord relief to the debtor, or for other
22 cause" pursuant to 11 U.S.C. § 350(b) and FED. R. BANKR. P. 5010.

23 1. Debtor is not asking that the creditor be added to the Schedules. Reopening for
24 the purpose of adding the creditors to the Schedules is not necessary in a no-asset chapter 7
25 case. In re Beezley, 994 F.2d 1433 (9th Cir. 1993). "If the omitted debt is of a type covered by
26 11 U.S.C. § 523(a)(3)(A), it has already been discharged pursuant to 11 U.S.C. § 727. If the
27 debt is of a type covered by 11 U.S.C. § 523(a)(3)(B), it has not been discharged, and is non-
28 dischargeable." Id. A student loan debt falls under § 523(a)(8) and is not automatically

1 discharged, pursuant to § 523(a)(3)(B). So, there would be no reason to reopen the case to add
2 the creditors to the Schedules.

3 2. Neither is Debtor asking for an opportunity to prove that the debt was
4 discharged. A case may be reopened (without additional fee) in order for a debtor to assert a
5 contempt motion for violation of the § 524 discharge injunction. In re ZiLog, Inc., 450 F.3d
6 996 (9th Cir. 2006); 28 U.S.C. § 1930. A debtor may also reopen a case to obtain a
7 determination from the court that a debt has been discharged. In re Ganous, 138 B.R. 110
8 (Bankr. S.D. Fla. 1992). Reopening is not necessary for jurisdictional purposes, however. In re
9 Menk, 241 B.R. 896 (9th Cir. BAP 1999).

10 Here, Debtor is not contending that the student loan debt was discharged. He merely
11 contends that it is "nonexistent" because the loan funds were already returned to the
12 Department of Education. The term "nonexistent" has no legal meaning. Since neither
13 dischargeability nor contempt for a Bankruptcy Court order are at play, there would be no
14 jurisdiction for the Bankruptcy Court to reopen the case simply to adjudicate the "claim," since
15 there was no claim filed in the no-asset case and Debtor could resolve this matter outside of
16 bankruptcy.

17 3. Finally, Debtor also alleges that paying this debt would be a "hardship." Debtor
18 is essentially moving for a hardship discharge under § 523(a)(8). A complaint under
19 § 523(a)(8) can be filed "at any time" and the Code and Rules contemplate that the discharge
20 status of various debts may need to be determined post-closing. In re Menk, 241 B.R. at 911
21 (citing FED. R. BANKR. P. 4007(b)). In addition, the Advisory Committee Note to Rule 4007
22 states that jurisdiction over § 523(a)(8) dischargeability issues is held concurrently by the
23 bankruptcy court and any appropriate non-bankruptcy forum.

24 Rule 4007(b) also states: "A case may be reopened without payment of an additional
25 filing fee for the purpose of filing a complaint to obtain a determination under this rule."

26 Furthermore, in adjudicating the amount of the non-dischargeable debt, the court could
27 consider Debtor's affirmative defense that the debt does not "exist." FED. R. BANKR.
28 P. 3007(b).

1 **CONCLUSION**

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3 The court may reopen a case in order to accord relief to the Debtor. 11 U.S.C. § 350(b).

4 The Debtor alleges, among other things, that he is unable to pay a non-dischargeable
5 student loan debt. Therefore, the court deems the request as one to allow the Debtor to file a
6 complaint for a "hardship" discharge, pursuant to 11 U.S.C. § 523(a)(8) and FED. R. BANKR.
7 P. 4007. The Debtor may also object to the claim in the context of the adversary proceeding.
8 FED. R. BANKR. P. 3007(b).

9
10 **ORDER**

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12 IT IS HEREBY ORDERED:

13 1. GRANTING Debtor's Motion to Reopen. No additional filing fee will be
14 required. FED. R. BANKR. P. 4007(b).

15 2. Debtor shall have 30 days from the date of this order in which to file an
16 adversary complaint and provide proper service to the opposing parties, pursuant to the
17 Bankruptcy Code and Rules. See 11 U.S.C. § 523(a)(8); FED. R. BANKR. P. 7001 et seq.

18 3. A case trustee need not be appointed. FED. R. BANKR. P. 5010.

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20 DATED AND SIGNED ABOVE.

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22 COPIES to be sent by the Bankruptcy Noticing
Center ("BNC") to the following:

23 Debtor
24 Trustee
25 Office of the U.S. Trustee
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