



SO ORDERED,

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: June 6, 2016**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**ROWDY PAUL MECHE AND
TONYA LYNN MECHE,**

CASE NO. 10-04357-NPO

DEBTORS.

CHAPTER 13

ORDER DENYING MOTION TO REOPEN CHAPTER 13 CASE

This matter came before the Court on the Motion to Reopen Chapter 13 Case (the "Motion")(Dkt. 67) filed by the debtors, Rowdy Paul Meche and Tonya Lynn Meche (the "Debtors") in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Notice of the Motion was proper under the circumstances.

Facts

1. The Debtors filed a voluntary petition for relief pursuant to chapter 13 of the

Bankruptcy Code on December 10, 2010. (Dkt. 1).

2. On March 20, 2014, Harold J. Barkley, Jr., the chapter 13 trustee (the “Trustee”), filed the Trustee’s Notice of Completion of Plan Payments (the “Trustee’s Notice”) (Dkt. 53), which provided that Debtors “have made all plan payments required to complete the confirmed Chapter 13 plan.” (Trustee’s Not. at 1). Along with the Trustee’s Notice, the Clerk of Court (the “Clerk”) sent the Notice to Individual Debtor(s) of Requirements to File Certification and Motion for Entry of Discharge (the “Clerk’s Notice”) (Dkt. 53 at 2). In the Clerk’s Notice, the Clerk notified the Debtors that the Trustee had filed the Trustee’s Notice, which provided “that all required payments under the confirmed plan in this case have been completed.” (Clerk’s Not. at 1). The Clerk’s Notice informed the Debtors that in order to receive a discharge, they must file a motion for entry of discharge.¹ (*Id.*). The Clerk’s Notice also explained that the Debtors must sign, file, and serve copies of their motion within thirty (30) days of the filing of the Trustee’s Notice, and that if they fail to do so, it “may result in your case being closed without an entry of discharge.” (*Id.*).

3. The Clerk issued the Notice of Deficiency (the “First Deficiency”) (Dkt. 56) on April 22, 2014, notifying the Debtors that they had not yet filed a Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management (Official Form B23) (the “Postpetition Certification”). According to the First Deficiency, the Debtors’ failure to file the Postpetition Certification within fourteen (14) days of entry of the First Deficiency would “result in the case being closed without the entry of a discharge and without further notice from the

¹ The Notice gave the Debtors detailed information regarding the motion necessary to receive a discharge. (Not. at 1).

court.” (First Deficiency at 1).

4. The Clerk also issued the Notice of Deficiency (the “Second Deficiency”) (Dkt. 57) on April 22, 2014, notifying the Debtors that they had not yet filed the motion for entry of discharge as required by the Clerk’s Notice. (Second Deficiency at 1). The Second Deficiency informed the Debtors that unless they file the motion for entry of discharge “prior to the filing of the Chapter 13 Final Report Account, the [Bankruptcy Case] will be closed without entry of discharge and without further notice from the Court.” (*Id.*).

5. In compliance with the Clerk’s Notice and Second Deficiency, the Debtors filed the Debtor’s Certification and Motion for Entry of Chapter 13 Discharge Pursuant to 11 U.S.C. § 1328(a) and (h) (the “Discharge Motion”) (Dkt. 60) on April 29, 2014, before the Trustee filed the Chapter 13 Standing Trustee’s Final Report and Account (Dkt. 61) on May 8, 2014.

6. The Court entered the Final Decree/Order Closing Case (Dkt. 63) on June 13, 2014.

7. The Debtors failed to file the Postpetition Certification in compliance with the First Deficiency. Accordingly, the Clerk issued the Notice of Case Closing Without Entry of Discharge (Dkt. 64) on June 13, 2014.

8. The Debtors filed the Motion on June 1, 2016, nearly two (2) years after the Bankruptcy Case was closed without the entry of a discharge. In the Motion, the Debtors requested that the Bankruptcy Case be reopened to allow them to file the Postpetition Certification so that they can receive a discharge.

Discussion

A closed bankruptcy case may be reopened pursuant to § 350(b)² “to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b). Section 350(b) grants the Court broad discretion to reopen a closed case when a debtor can show cause as to why the bankruptcy case should be reopened. *Citizens Bank & Trust Co. v. Case (In re Case)*, 937 F.2d 1014, 1018 (5th Cir. 1991); 3 COLLIER ON BANKRUPTCY § 350.03 (16th ed. 2015). Whether a court should grant a motion to reopen depends upon the circumstances of the individual case. *Id.* In deciding whether to reopen a bankruptcy case, a court should consider whether doing so would be futile. “If substantive relief [cannot] be granted in the reopened case, then there is no reason to grant a motion to reopen.” *The First Nat’l Bank of Jeffersonville v. Goetz (In re Goetz)*, Adv. No. 08-3341, 2009 WL 1148580, at *2 (Bankr. S.D. Tex. Apr. 24, 2009). Thus, “if reopening a case would be futile and a waste of judicial resources or would serve no purpose, then cause to reopen does not exist.” *Id.* (citations omitted).

A court’s power to reopen a case is not limited by a certain time period under § 350(b) or Rule 5010 of the Federal Rules of Bankruptcy Procedure (“Rule 5010”). However, “[t]he longer the time between the closing of the estate and the motion to reopen . . . the more compelling the reason for reopening the estate should be.” *In re Case*, 937 F.2d at 1018. Additionally, the doctrine of laches may apply to bar the reopening of a bankruptcy case that has been closed for a significant amount of time. 3 COLLIER ON BANKRUPTCY ¶ 350.03[6].

In *In re Lancellotti*, No. 10-04152-NPO (Dkt. 65) (Bankr. S.D. Miss. July 2, 2014), this

² All code sections refer to the Bankruptcy Code in title 11 of the U.S. Code, unless stated otherwise.

Court held that a debtor must show cause as to why his or her bankruptcy case should be reopened and that a three (3)-year delay prohibited the debtor from establishing a compelling reason to reopen the bankruptcy case under the specific details of that case. *Id.* The bankruptcy case in *Lancellotti* was closed without a discharge because, similarly to the Debtors in the Bankruptcy Case, the debtor failed to file the Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management (Official Form B23). *Id.* at 2. Three (3) years later, the debtor filed a motion to reopen in order to file the certification necessary for her to obtain a discharge. *Id.* In denying the motion to reopen, this Court noted that the debtor “fails to provide any explanation for the length of the delay in completing the instructional course.” *Id.* at 3. Further, the doctrine of laches barred the bankruptcy case from being reopened because the debtor made no effort to comply with the certification requirement until three (3) years after the bankruptcy case was closed. *Id.* at 4.

In *In re Ruckes*, which involved facts similar to the Bankruptcy Case, this Court denied a motion to reopen to allow a debtor to file the certification required to obtain a discharge five (5) years after the bankruptcy case was closed. *In re Ruckes*, No. 08-02611-NPO (Dkt. 79) (Bankr. S.D. Miss. June 17, 2014).³ The Court found that because the debtor’s delay was “inexcusable,” the debtor could not show cause as to why the bankruptcy case should be reopened. *Id.* at 4. This Court also found that the doctrine of laches operated as a bar to reopening. *Id.* Facts

³ In *In re Ruckes*, the Court had granted a previous motion to reopen the bankruptcy case in order to prevent the disclosure of confidential information contained in a proof of claim. *In re Ruckes*, No. 08-02611-NPO (Dkt. 79), slip op. at 2. After such relief was obtained, the bankruptcy case was again closed. *Id.* at 4. In denying the debtor’s motion to reopen, the Court considered the amount of time that had elapsed since the bankruptcy case was closed for the first time. *Id.*

important to this Court's decision were: (a) the debtor received formal notice of the certification required; (b) the debtor failed to comply with the certification requirement; and (c) the debtor did not offer an explanation for her failure to comply or delay in bringing the motion. *Id.* at 4-5.

In the Bankruptcy Case, the Court finds that the Debtors have failed to show cause as to why the Bankruptcy Case should be reopened. The Clerk notified the Debtors on April 22, 2014, that the Bankruptcy Case would be closed without entry of a discharge if they failed to file the Postpetition Certification within fourteen (14) days. Although the Debtors complied with the Clerk's Notice and Second Deficiency by filing the Discharge Motion, they did not file the Postpetition Certification, and the Bankruptcy Case was closed without a discharge. The Debtors seek to reopen the Bankruptcy Case almost two (2) years later in order to file the Postpetition Certification, offering no explanation for why they took no action after before the Bankruptcy Case was closed, or in the nearly two (2) years since the Bankruptcy Case was closed. The Court finds this delay inexcusable, and under the particular facts of the Bankruptcy Case, the inexcusable delay prohibits the Debtors from showing cause under § 350(b).

As this Court has previously held, the doctrine of laches also bars the reopening of the Bankruptcy Case. The doctrine of laches requires proof of two (2) elements: "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Costello v. United States*, 365 U.S. 265, 282 (1961) (citations omitted). "The doctrine of laches is important in bankruptcy proceedings because 'a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period of time.'" *In re Lancellotti*, No. 10-04152-NPO (Dkt. 65), slip op. at 4)(quoting *Katchen v. Landy*, 382 U.S. 323, 328 (1966)). In the Bankruptcy Case, the

first element is met because the Debtors made no effort to file the Postpetition Certification in compliance with the First Deficiency. The Debtors also failed to offer any explanation for their failure to comply. The second element is also met because, under the facts of the Bankruptcy Case, where creditors have relied in good faith on the administration and closing of the Bankruptcy Case without a discharge for nearly two (2) years, “it would be prejudicial and unfair to allow the Debtor[s] to obtain a discharge at this late date.” *In re Lancellotti*, No. 10-04152-NPO (Dkt. 65), slip op. at 4.

As it has previously held, this Court’s ruling “does not suggest that the passage of time, without more, is generally sufficient to establish laches.” *In re Ruckes*, No. 08-02611-NPO (Dkt. 79), slip op. at 5. Given the fact that the First Deficiency notified the Debtors that they were required to file the Postpetition Certification to receive a discharge, their failure to comply, and the nearly two (2) year delay in filing the Motion, the Court finds that the Debtors have not met their burden to show cause as to why the Bankruptcy Case should be reopened pursuant to § 350(b). Accordingly, the Motion should be denied.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

##END OF ORDER##