



statement of intentions indicated that he intended to surrender the property.

3. The first meeting of creditors was held on September 29, 2000 and the Trustee filed a Report of No Distribution on October 2, 2000. The report stated that the Trustee "has neither received any property nor paid any money on account of the estate, and that there is no property available for distribution from the estate over and above that exempted by the Debtor."

4. On or about December 8, 2000, the Court entered its Final Decree, finding that Debtors' bankruptcy case had been fully administered, discharging the Trustee, and closing the case.

5. On or about April 18, 2002, the Trustee filed a Motion to Reopen the Case and the basis for the request is that the Trustee has discovered that the Deed of Trust on the property located at 5352 Larch Court, Winston-Salem, North Carolina, may be defective in as much as the Deed of Trust was re-recorded on September 14, 2001. The grantors under the Deed of Trust are the male Debtor and Angela Spry.

6. The Deed of Trust was re-recorded to include the legal description of the property. The initial Deed of Trust only described the property as 5352 Larch Court, Winston-Salem, North Carolina. The initial Deed of Trust was for the benefit of Heartland Home Finance, Inc. It is believed that Heartland sold the loan to Bank One. Security Union issued a Policy of Title Insurance in connection with the sale and mortgage of the property.

7. Security Union contends that the motion to reopen should be denied as the property was abandoned by the Trustee, or even if the Trustee could revoke his abandonment of the Property, that the Deed of Trust was sufficient as originally filed and there is not a sufficient legal basis to reopen the bankruptcy case.

## DISCUSSION

11 U.S.C. § 350 governs the closing and reopening of cases. The statute provides as follows:

(a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.

(b) 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 case.

Rule 5010 of the Rules of Bankruptcy Procedure provide that a case may be reopened on motion by the Debtor or other party in interest pursuant § 350. The Chapter 7 Trustee is a "party in interest" within the meaning of Bankruptcy Rule 5010 and has authority to move to reopen a case. See White v. Boston, 104 B.R. 951 (S.D. Ind. 1989); In re Stanke, 41 B.R. 379 (Bankr. W.D.Mo. 1984); In re Winebrenner 170 B.R. 878 (Bankr. E.D.Va. 1994).

The burden is on the Trustee to demonstrate that there is a legal basis to reopen the estate. Under § 350 there are only three grounds upon which to reopen an estate and those are as follows: (1) to administer assets; (2) to accord relief to the debtor; and (3) for other cause. It is clear that the Trustee must prevail under either (1) to administer assets or (3) for other cause.

The first issue to be addressed is whether are any assets to be administered. The bankruptcy code requires that a Debtor list all of his assets on the bankruptcy petition. The Debtors listed the condo as an asset and listed the mortgage holder. Section § 554(c) provides that "unless the court orders otherwise, any property scheduled under Section 521(1) of this title not otherwise administered at the time of the closing of the case is *abandoned to the debtor and administered for purposes of Section 350 of this Title.*"(emphasis added). Therefore, the closing of the case constituted an abandonment of the property by the Trustee and removed it from the property of the estate. As stated in In re Keller, 229 B.R. 900 (Bankr. S.D. Ohio 1998), if property is properly scheduled, it is abandoned upon the closing of the case. "The effective abandonment

is clear. Whether property be abandoned under §554(a) or (c), it is removed from the estate, thereby divesting the trustee of control, and divesting the bankruptcy court of jurisdiction over matters concerning abandoned property.” Id. at 902.

Only property that has been properly scheduled can be abandoned by the closing of a case. If property or claims are not scheduled by debtors and there is no indication that the Trustee was aware of the property then such property cannot be abandoned to the debtor pursuant to § 554. Allowing a Trustee to revoke an abandonment is appropriate only where the Trustee is misled by false or incomplete information. In re Adair, 253 B.R. 85 (9<sup>th</sup> Cir BAP 2000). See also In re Arboleda, 224 B.R. 640 (Bankr. M.D.Ill. 1998)(motion to reopen denied when assets were listed on debtor’s schedules). When an asset is fully disclosed but at some later time, the value is determined to be greater than previously believed, the abandonment remains irrevocable. In re Ozer, 208 B.R. 630, 633 (E.D.N.Y. 1997). Accordingly the court finds that there are no assets to administer.

The second way in which the court can reopen the case is for cause. Cause is not defined; however, in the matter before the court, the Trustee has filed the motion almost eighteen months after the case was closed. There is no evidence that the Debtors failed to properly schedule the property or that the debtors misled the Trustee or gave false or incomplete information. Accordingly, the Court does not find that cause exists to reopen the case.

IT IS THEREFORE, ORDERED, ADJUDGE AND DECREED THAT THE TRUSTEE’S MOTION TO REOPEN THE CASE IS DENIED.

This the 21 day of June 2002.

CATHARINE R. CARRUTHERS

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Catharine R. Carruthers  
United States Bankruptcy Judge