

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

In re:

HENRY DELACRUZ,

Debtor.

Chapter 7

Case No. 11-50969 (JAM)

Re: ECF No. 21

ORDER DENYING MOTION TO REOPEN

On November 4, 2024, interested party Margie Peters (Ms. Peters) appearing pro se, filed a Motion to Reopen (the “Motion to Reopen,” ECF No. 21) the Chapter 7 case of Henry DeLaCruz (the “Debtor”). The Debtor’s Chapter 7 was closed on October 12, 2011, and the Debtor was granted a discharge under 11 U.S.C. § 727 on September 26, 2011 (ECF No. 18). In the Motion to Reopen, Ms. Peters states that she is the surviving spouse of the Debtor. She also states that she is being asked to pay a debt related to real property located at 40 Bayne Street, Norwalk, Connecticut, which she believes was discharged in the Debtor’s Chapter 7 case. On November 8, 2024, the Court scheduled a Status Conference on the Motion to Reopen to be held on December 10, 2024, at 10:00 a.m.

On November 15, 2024, Ms. Peters filed a Motion to Avoid Judicial Lien (the “Motion to Avoid Judicial Lien,” ECF No. 25), seeking the entry of an order avoiding a mortgage filed against the real property located at 40 Bayne Street, Norwalk, Connecticut (ECF No. 25). In the Motion to Avoid Judicial Lien, Ms. Peters states, among other things, that the constant threat of losing her house due to non-payment is unlawful and that she and her husband never reaffirmed the mortgage debt to any lenders. She also asserts that the mortgage lien(s) impairs the real property located at 40 Bayne Street, Norwalk, Connecticut, because the property is exempt property under 11 U.S.C. § 522(f).

The Status Conference was held on December 10, 2024. Ms. Peters appeared at the Status Conference. The Court informed Ms. Peters that the Motion to Reopen could not be granted because the relief she is seeking in the Motion to Avoid Judicial Lien cannot be granted. The Court explained to Mr. Peters that the relief she is requesting cannot be granted for several reasons, including that: (i) the discharge the Debtor received does not relieve the obligation to pay the amounts due under the applicable note and mortgage if she wants to retain the home; and (ii) a mortgage is not a judicial lien.

A case may be reopened pursuant to 11 U.S.C. § 350(b) “in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.” *See In re Palumbo*, 556 B.R. 546 (Bankr. W.D.N.Y. 2016) (discussing factors to review when considering whether cause exists to reopen a case). The Motion to Reopen fails to establish that there are assets to be administered, that relief should be accorded to the Debtor, or that other cause exists to reopen the case. In fact, the Chapter 7 Trustee filed a Report of No Distribution on July 6, 2011, and stated that there was no property available for distribution from the Debtor’s estate. Furthermore, for the reasons stated below, there is no relief that can be accorded to the Debtor if the case is reopened.

Ms. Peters argues that the Debtor’s discharge has been violated. She believes the discharge the Debtor received extinguishes the debt associated with the mortgage, although she did state during the Status Conference that she is almost current with the debt owed to the creditor. However, Ms. Peter’s interpretation of the discharge injunction is misplaced. The discharge injunction under 11 U.S.C. §§ 524(a), and the discharge provision in 727(b), provide as follows:

- (a) A discharge in a case under this title-(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor . . .

[and] (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt *as a personal liability of the debtor* . . .

11 U.S.C. § 524(a) (emphasis added); and

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

11 U.S.C. § 727(b).

Based on the language of the statute, section 524(a)(2) prevents enforcement of personal liability and acts as a bar to the “commencement or continuation” of acts or actions to collect a discharged debt “as a personal liability.” 11 U.S.C. § 524(a)(2). While a bankruptcy discharge eliminates a borrower’s personal liability with respect to real property secured by a lien, the Chapter 7 discharge does not eliminate a lien on the property and a lender is still permitted to proceed with its in rem rights with respect to the property if timely payments are not made. *See* 11 U.S.C. §727(b); *Johnson v. Home State Bank*, 501 U.S. 78, 80 (1991) (“[A] bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor *in personam*—while leaving intact another—namely, an action against the debtor *in rem*.”).

Moreover, the relief Ms. Peters seeks under section 522(f) cannot be granted because a mortgage is not a judicial lien and liens, such as mortgages, survive a bankruptcy case. 11 U.S.C. § 101(36); *see* 11 U.S.C. § 522(f)(2)(C); *Dewsnup v. Timm*, 502 U.S. 410 (1992); *see also Curwen v. Whiton*, 557 B.R. 39, 43 (D. Conn. 2016). Finally, the Debtor’s claim of exemption does not affect the creditor’s mortgage because it is not a judicial lien subject to avoidance

pursuant to section 522(f) and it is not an unsecured claim subject to distribution and discharge.

See 11 U.S.C. §§ 522(f)(2)(C), 725, 726, 727, 541, 554.

Accordingly, after reviewing the Motion to Reopen and the record of the Debtor's case, it is hereby

ORDERED: The Motion to Reopen is **DENIED**; and it is further

ORDERED: No action will be taken on the Motion to Avoid to Lien, ECF No. 25, due to the denial of the Motion to Reopen. *See*, D. Conn. Bankr. L.R. 5010-1(d).

ORDERED: At or before 5:00 p.m. on December 11, 2024, the Clerk's Office shall serve this Order on Ms. Peters at the address provided in the Motion to Reopen.

Dated at Bridgeport, Connecticut this 11th day of December, 2024.

Julie A. Manning
United States Bankruptcy Judge
District of Connecticut

