

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

CARMINE J. PRESTIPINO : BK No. 10-13306  
NICOLE R. PRESTIPINO : Chapter 7  
Debtors

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ORDER DENYING MOTION TO REOPEN

APPEARANCES:

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Newport, Rhode Island 02840

Peter M. Iascone, Esq.  
Peter M. Iascone & Associates, Ltd.  
Attorney for Scott Chasm  
117 Bellevue Avenue  
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BEFORE ARTHUR N. VOTOLATO United States Bankruptcy Judge

Debtors have moved to reopen this Chapter 7 case in order to add Scott Chasm ("Chasm") as a creditor. Chasm objects.

These are the relevant facts: In August 2009 Chasm sustained a dog bite while he was a guest in the home of Nicole Silvia. Chasm's attorney put Silvia on notice of the incident and requested information about her insurance coverage. The liability carrier, Amica, responded to Chasm's attorney, informing him that the dog was owned by Carmine Prestipino, not the insured, Nicole Silvia. In September 2009, Amica denied liability as to Chasm's claim. The Debtors, Carmine and Nicole, now married, filed their Chapter 7 petition on August 5, 2010, received discharges on January 4, 2011, and the case was closed. Debtors filed the instant motion to reopen on September 15, 2011.

Chasm was not listed as a creditor, although the dog-bite incident was known and discussed with counsel at the time the bankruptcy was filed.<sup>1</sup> Subsequent to the entry of discharge, Chasm filed a lawsuit in the Newport County Superior Court against the (now discharged) Debtors, alleging negligence, strict liability, and "vicious tendencies" (about the dog, presumably).

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<sup>1</sup> The proffered reason for the Debtors' failure to list Chasm as a creditor was the Debtors' belief that prior to bankruptcy, no "claim nor demand had...been made, and there was no reason to think that the alleged incident...would result in litigation." Debtors' Memorandum. Given the all encompassing definition of "claim" in the Bankruptcy Code, 11 U.S.C. § 101(5), this explanation for the Debtors' reasoning could not be more off the mark.

The applicable Bankruptcy Code section, 11 U.S.C. § 350(b), provides: "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 cause." Reopening a closed case is "not a matter of right," *In re Gray*, 60 B.R. 428, 429 (D.R.I. 1986), and should not be treated lightly. In dealing with such motions, this Court has stated that "the debtor is held to a standard of reasonable diligence in ascertaining and listing all creditors." (Citations and internal quotations omitted) *In re Fraza*, 143 B.R. 584,586 (Bankr. D.R.I. 1992)(citing cases). "[M]istaken belief provides no defense" for failure to list a creditor. *Id.*

These Debtors knew about Chasm's injury and how it occurred, and were on notice that Chasm, through his attorney's communications with Nicole about her liability insurance coverage, was seeking compensation from *someone*. In these circumstances the failure to list Chasm as, at least a contingent creditor, is inexplicable and does not fit within even a most liberal reading of "other cause." Accordingly, the Debtors Motion to Reopen their case to add Scott Chasm as a creditor is **DENIED**.

Enter.



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Arthur N. Votolato  
U.S. Bankruptcy Court

Entered on docket: 11/18/11