

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND

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In re: :  
NUNO DAMASO : BK No. 96-12747  
Debtor : Chapter 7  
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**ORDER GRANTING MOTION TO REOPEN**

The Debtor wishes to reopen his bankruptcy case to avoid a judicial lien that was not addressed while the case was open. The lien creditors, Jose and Rosa Rebocho, oppose the motion to reopen on the ground that the Debtor has failed to establish excusable neglect. For the reasons discussed, the motion to reopen is GRANTED.

**BACKGROUND**

In February 1996, the Rebochos recorded a judgment lien on Damaso's house in East Providence, Rhode Island. Six months later Damaso filed a Chapter 7 petition, listing the Rebochos as secured creditors in the amount of \$11,133, based on a 1995 state court judgment. In November 1996, Damaso received a discharge of his debts, including the Rebochos', and the case was closed. No lien avoidance action was taken by Damaso while his case was open.

Seven years later, in January 2004, Damaso filed a motion to reopen his bankruptcy case for the purpose of avoiding the Rebochos' lien.<sup>1</sup> At the hearing on the motion to reopen, no evidence was

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<sup>1</sup> While the record is not clear as to what prompted the present motion, this scenario typically occurs where the debtor is attempting to refinance or sell the property, and during the title search the lien is discovered.

offered by either side, but Debtor's counsel stated that the primary purpose of the 1996 bankruptcy filing was to discharge his debt to the Rebochos and to avoid their lien on his house. He did not offer an explanation why no lien avoidance action was taken during the pendency of the case, other than "it fell through the cracks."

### **DISCUSSION**

"Failure to establish excusable neglect" is the only reason given by the lien creditors in their objection to the motion to reopen, but excusable neglect happens not to be the correct test to apply when considering such motions.

Section 350(b) of the Bankruptcy Code 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." 11 U.S.C. § 350(b). In a previous discussion about the broad, general language of this Section, this Court stated:

Courts allowing motions to reopen to avoid judicial liens have given various reasons for doing so, including:

(1) the absence of any deadline in the Code or Bankruptcy Rules for initiating a lien avoidance under section 522(f) ...; (2) ... 11 U.S.C. § 350 which states that a case may be reopened to accord relief to the debtor; (3) legislative history which refers to reopening cases for lien avoidance subject to the bar of laches; (4) the fresh start policy of the Code which encourages the full application of the Code's exemption provisions; and (5) the interpretation of the right to avoid liens under section 522(f) as a "personal" right of

the debtor which exists independent of case administration.

*In re Procaccianti*, 253 B.R. 590, 591 (Bankr. D.R.I. 2000) (quoting *In re Quackenbos*, 71 B.R. 693, 695 (Bankr. E.D. Pa. 1987)) (other citations omitted). Because all of the reasons discussed in *Procaccianti* probably apply in this case as well, and since there is no allegation of bad faith on the part of the Debtor, or prejudice to creditors, the motion to reopen is GRANTED.

The Debtor has 10 days to file an appropriate request for relief, and the hearing on the motion will be heard on September 30, 2004. A joint pre-trial order shall be filed by September 28, 2004.

If a lien avoidance motion is not timely filed by the Debtor, the case will be closed again, this time with prejudice.

Dated at Providence, Rhode Island, this 10<sup>th</sup> day of September, 2004.



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Arthur N. Votolato  
U.S. Bankruptcy Judge