

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)
)
 LAUNA ELKINS) Case No. 00-13333-SSM
) Chapter 7
 Debtor)

MEMORANDUM OPINION AND ORDER

Before the court is the debtor's motion to reopen her closed case in order to prosecute motions to avoid two judgment liens against her home. For the reasons stated, the motion to reopen will be denied.

Background

The debtor, Launa Elkins, filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code in this court on August 8, 2000. On her schedules, she listed an ownership interest in real property located at 2002 Coast Guard Drive, Stafford, Virginia, which she valued at \$115,000, subject to a deed of trust in the amount of \$112,000, and a lien of \$2,000 for homeowners association dues.¹ She claimed \$100 of equity in the property as exempt under the Virginia homestead exemption.² Her statement of financial affairs listed pending suits by Capital One Bank and Leasecomm Corporation but did not list judgment liens in favor of either creditor.

¹ In her motion to reopen, these figures are somewhat refined, with the balance on the deed of trust being \$111,416, and the homeowners association lien being \$1,323.

² The motion represents that the debtor has recently amended her homestead deed to increase this amount to \$3,000.00.

The debtor received a discharge on November 16, 2000, and an order was entered closing the case on November 21, 2000. Two weeks *after* the case was closed, the debtor filed a praecipe requesting that the clerk “delay the closing of this case for thirty days to allow Debtor to file an adversary proceeding for judgment lien release motion.” No further papers were filed by the debtor until some five and a half years later, when the debtor filed the motion that is currently before the court to reopen the case for the purpose of avoiding two judgment liens—one in favor of Leasecomm Corporation for \$2,440.25, and the other in favor of Capital One Bank in the amount of \$884.91—that had been docketed against the property prior to the bankruptcy filing. Leasecomm and Capital One, although served with the motion to reopen and the lien avoidance motion, did not file a response or appear at the hearing.

Debtor’s counsel acknowledged at the hearing that the debtor had been aware of the Capital One judgment lien before the bankruptcy case was closed but decided not to pursue a lien avoidance motion at the time because the amount was relatively small. Debtor’s counsel further represented that no action has been taken by either creditor to enforce its judgment lien in the five and a half years since the case was closed, and that the debtor, who is elderly, now seeks to avoid those liens because she is in the process of obtaining a “reverse mortgage” against the property.

Discussion

A closed bankruptcy case may be reopened for various reasons including “to accord relief to the debtor.” § 550(b), Bankruptcy Code. The decision whether to reopen a closed case is discretionary with the court. *Hawkins v. Landmark Finance Co.*, 727 F.2d 324 (4th Cir.

1984) (holding that bankruptcy court did not abuse its discretion by denying leave to reopen eight months after case was closed to file motion to avoid security interest in furniture where the creditor had incurred expenses in reliance on the continued vitality of the lien.) One type of relief available to an individual debtor in bankruptcy is the avoidance of certain types of liens, including judgment liens, that impair an exemption to which the debtor would be entitled. § 522(f), Bankruptcy Code. As this court has previously recognized, “In the absence of a compelling reason to the contrary, leave to reopen a closed bankruptcy case to file a lien avoidance motion should ordinarily be freely granted because neither the Bankruptcy Code nor the Bankruptcy Rules sets a time limit for [debtor] lien avoidance [under § 522(f), Bankruptcy Code], and to not allow the matter to be heard would frustrate Congress’s intent to protect a debtor’s exemptions as part of the debtor’s ‘fresh start.’” *In re Mary Jo Fitzhenry*, No. 96-10191, 1998 WL 1147929 at *4 (Bankr. E.D. Va., September 2, 1998), available at <http://www.vaeb.uscourts.gov/opinions/ssm/fitzhenry.pdf> (citing *In re Beneficial Fin. Co. of Va.*, 18 B.R. 174, 175–76 (Bankr. E.D. Va. 1982)).

At the same time, sound bankruptcy policy should not reward dilatory assertions of stale claims for relief. Put another way, every bankruptcy case must come to an end at some point. The longer the lapse of time between the closing of the case and the request for reopening, the greater should be the burden on the movant to show good reasons why the action could not have been brought earlier. No such showing has been made in this case. In this connection, the court notes that if a bankruptcy trustee were seeking to set aside a judgment lien under one of the trustee’s own avoiding powers, such action would have to be commenced no later than two years after the filing of the bankruptcy petition in a voluntary

case. § 546(a)(1), Bankruptcy Code. Although the two-year limitation for trustee avoidance claims does not by its terms apply to debtor lien avoidance motions under § 552(f), Bankruptcy Code, the court nevertheless finds it useful as a guide to what would generally time — at least in the absence of exceptional circumstances — be a reasonable outside for bringing such a motion.

In the present case, given the unusually long lapse of time between the closing of the case and the motion to reopen, as well as the fact that the debtor had actual knowledge of at least one of the judgment liens at the time the case was closed but chose not to pursue its avoidance because it did not seem worth the cost, the court cannot find that the debtor has acted with reasonable diligence to prosecute her avoidance rights. Accordingly, the court declines to reopen the case to permit the bringing of lien avoidance motions that could, and should, have been brought more than five years ago.

ORDER

For the reasons stated, it is

ORDERED:

1. The motion to reopen is denied.
2. The clerk will mail a copy of this order, or give electronic notice of its entry, to the parties listed below.

Date: May 18 2006

Alexandria, Virginia

/s/ Stephen S. Mitchell

Stephen S. Mitchell
United States Bankruptcy Judge

Entered on Docket: May 18 2006

Copies to:

Ronald B. Cox, Esquire
Suite C, 308 Poplar Alley
P.O. Box 468
Occoquan, VA 22125
Counsel for the debtor

Gordon P. Peyton, Esquire
Redmon, Peyton & Braswell
510 King Street, suite 301
Alexandria, VA 22314
Chapter 7 trustee

Leasecomm Corporation
c/o Corporate Service Co., R.A.
11 South 12th Street
Richmond, VA 23218

Capital One Bank
c/o Corporate Service Co., R.A.
11 South 12th Street
Richmond, VA 23218

Capital One Bank
Attn: Richard D. Fairbank, CEO
1680 Capital One Drive
McLean, VA 22102