

How Long Is Too Long To Reopen A Bankruptcy Case?

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In a *per curiam* opinion that is not precedential but of interest to lenders who take mortgages as security, the Court of Appeals for the Third Circuit decided that the Debtor's effort to reopen her bankruptcy case was too late.

The basic facts were stated by the court as follows:

In 1997, Scheib filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Western District of Pennsylvania. The petition was converted to Chapter 7 and in 1998, the Bankruptcy Court granted a motion by Mellon Bank, N.A. (now The Bank of New York Mellon and BNY Mellon, N.A.) for relief from the automatic stay to pursue foreclosure of Scheib's property in state court. Scheib received a discharge releasing her from her dischargeable debts and her bankruptcy case was closed on October 14, 1998. Scheib was evicted from the property that was the subject of the state foreclosure action in 1999. Scheib has since filed, without success, numerous actions in state and federal court seeking to challenge the foreclosure.

In 2013, Scheib filed a motion in Bankruptcy Court to reopen her case. Although the motion is far from clear, Scheib appears to allege that she paid her mortgage in full and that Mellon Bank committed fraud in the foreclosure action and the bankruptcy proceeding. . . .

In re Scheib, 2015 WL 6685714, at *1 (3d Cir. Nov. 3, 2015).

The Bankruptcy Court denied the motion, *inter alia*, as untimely. The District Court affirmed, as did the Court of Appeals, stating:

We agree with the Bankruptcy Court's conclusion that Scheib's motion to reopen was untimely filed. Federal Rule of Bankruptcy Procedure 9024 incorporates, with certain exceptions, Federal Rule of Civil Procedure 60, which sets forth the grounds for relief from a final judgment and the time requirements for filing a motion. Fed. R. Bankr.P. 9024; Fed.R.Civ.P. 60(b),(c). There is no question that Scheib's motion to reopen, filed more than fourteen years after her bankruptcy case was closed, was not filed within a reasonable time as required by Rule 60(c).

Scheib, 2015 WL 6685714, at *1.

The Court of Appeals noted that, although 11 U.S.C. § 350 authorizes a bankruptcy case to be reopened to administer assets and for other purposes, the debtor's purpose in attempting to reopen this bankruptcy was more appropriately addressed to the state court which adjudicated the foreclosure. Citing to an earlier opinion, *In re Lazy Days' RV Center Inc.*, 724 F.3d 418, 421 (3d Cir.2013), the Court wrote: "We have stated that bankruptcy courts should determine whether proceedings are pending in state court and which forum—state court or bankruptcy court—is most appropriate to adjudicate issues raised by a motion to reopen." *Scheib*, 2015 WL 6685714, at *2.

Because Scheib's motion was another effort to undo the foreclosure and sale of her property, after she unsuccessfully sought relief from state court, and even though the state court foreclosure action was no longer pending, the Court ruled that "the Bankruptcy Court is not, under the circumstances of this case, the appropriate forum to seek relief." *Scheib*, 2015 WL 6685714, at *2.

Left unanswered in this opinion is the question of exactly what is a “reasonable time” that would satisfy the federal rules. How long is too long to reopen a bankruptcy case? We’ll have to wait for another decision to know. But 14 years is outside the window of “reasonableness.”

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