

JAN 05 2015

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. NV-14-1079-H1PaJu  
 )  
 RYAN JOHN WELCH and ) Bankr. No. 11-18277-LBR  
 JOLYN M. WELCH, )  
 )  
 Debtors. )  
 \_\_\_\_\_ )  
 )  
 DYMON INVESTMENTS, INC.; )  
 BK LAND INVESTORS, INC.; )  
 CHAD DYMON; JOHN "BUCK" LEE, )  
 )  
 Appellants, )  
 )  
 v. ) M E M O R A N D U M<sup>1</sup>  
 )  
 RYAN JOHN WELCH; JOLYN M. )  
 WELCH; BRIAN D. SHAPIRO, )  
 Chapter 7 Trustee, )  
 )  
 Appellees. )  
 \_\_\_\_\_ )

Argued and Submitted on September 18, 2014  
at Las Vegas, Nevada

Filed - January 5, 2015

Appeal from the United States Bankruptcy Court  
for the District of Nevada

Honorable Linda B. Riegler, Bankruptcy Judge, Presiding

Appearances: Stephanie M. Zinna of Olson, Cannon, Gormley,  
Angulo & Stoberski argued for appellants Dymon  
Investments, Inc., BK Land Investors, Inc., Chad  
Dymon, and John "Buck" Lee; Matthew Philip  
Pawlowski of Walsh & Friedman, Ltd., argued for  
appellees Ryan John Welch and Jolyn M. Welch.

<sup>1</sup> This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.

1 Before: HOULE,<sup>2</sup> PAPPAS, and JURY, Bankruptcy Judges.

2  
3 Creditors Dymon Investments, Inc., BK Land Investors, Inc.,  
4 Chad Dymon, and John "Buck" Lee (collectively "Creditors" or  
5 "Appellants") appeal the bankruptcy court's order denying their  
6 motion to reopen the closed chapter 7<sup>3</sup> case of debtors Ryan John  
7 Welch ("Welch") and Jolyn M. Welch (collectively, "Debtors"), by  
8 which Creditors sought to conduct an examination of Debtors  
9 under Rule 2004 of the Federal Rules of Bankruptcy Procedure.  
10 Finding no abuse of discretion, we AFFIRM.

11 **FACTS**

12 Pre-petition, Appellants and Welch were all members of  
13 several limited liability companies registered in Nevada  
14 ("Companies") that were engaged in the business of acquiring  
15 real properties, entitling these properties, and selling them  
16 for profit. In 2004, certain members of the Companies initiated  
17 a complaint for judicial dissolution (the "dissolution action")  
18 against other members of the Companies, including Welch. On  
19 August 5, 2005, an Offer of Judgment was filed in the  
20 dissolution action, whereby plaintiffs offered to allow a  
21 judgment be taken against them in favor of defendants Welch and  
22 RJ Welch, Ltd. (a Nevada corporation in which Welch presumably  
23 held some interest) in the amount of \$3,500,000. While

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24  
25 <sup>2</sup> The Honorable Mark D. Houle, U.S. Bankruptcy Judge for the  
26 Central District of California, sitting by designation.

27 <sup>3</sup> Unless otherwise indicated, all chapter, section and rule  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Appellants assert Welch and RJ Welch, Ltd., were paid \$3,500,000  
2 on account of this offer of judgment (which funds are also  
3 characterized by Appellants as an "asset"), no evidence exists  
4 in the record showing that Welch or RJ Welch, Ltd. were paid any  
5 portion of the \$3,500,000 or even accepted the \$3,500,000 offer  
6 of judgment.

7 The resolution of the dissolution action is not clear from  
8 the record. Subsequently, however, the plaintiffs in the  
9 dissolution action and other parties filed a complaint in state  
10 court against Welch and others on July 7, 2006, asserting  
11 various causes of action including fraud and breach of fiduciary  
12 duty based on defendants' alleged failure to contribute as  
13 promised to the Companies, and for otherwise interfering with  
14 plaintiffs' efforts to refinance and sell certain real property  
15 owned by the Companies. Appellants assert that Debtors filed  
16 their bankruptcy petition on the eve of trial in the 2006  
17 action.

18 Debtors filed for chapter 7 relief on May 27, 2011, and  
19 Lenard E. Schwartz was appointed chapter 7 trustee ("Trustee  
20 Schwartz"). On June 2, 2011, Creditors were sent notice of  
21 the § 341(a) meeting (set for June 27, 2011), notice that the  
22 case was a no-asset case, and instructions not to file a proof  
23 of claim unless creditors receive a notice to do so. The  
24 § 341(a) meeting was continued to July 15, 2011, and then again  
25 to August 22, 2011. Appellants appeared at the August 22, 2011  
26 § 341(a) meeting, where they contend they were advised that  
27 Welch's attorney stole money Welch allegedly received in the  
28 dissolution action, and that Welch was required to produce

1 documents to Trustee Schwartzer related to Welch's claim against  
2 his attorney. Welch allegedly failed to produce any such  
3 documents. On August 24, 2011, Trustee Schwartzer withdrew his  
4 initial no asset report on the grounds that he had submitted his  
5 resignation in the case due to a conflict of interest.

6 Debtors received a discharge on August 29, 2011. While  
7 Appellants contend that the discharge was entered in error,  
8 there is no evidence in the record that the discharge was  
9 revoked or vacated subsequent to its entry, nor is there any  
10 indication of error in entry of the discharge since no  
11 section 727 adversary had been filed to deny the discharge.

12 On October 26, 2011, successor trustee Brian Shapiro  
13 ("Trustee Shapiro") was appointed. The § 341(a) meeting was  
14 continued to October 31, 2011, and again continued to  
15 November 14, 2011, although Creditors argue they did not have  
16 notice of this continued § 341(a) meeting. On November 16,  
17 2011, Trustee Shapiro filed a notice of assets. Several months  
18 later on January 18, 2002, however, Trustee Shapiro filed a  
19 report of no distribution, and the clerk of the bankruptcy court  
20 entered a final decree that same day discharging Trustee Shapiro  
21 and closing the case.

22 Two months after the case was closed, on March 23, 2012,  
23 Creditors filed a Motion in the bankruptcy case for an order  
24 requiring Debtors to appear for examination under Rule 2004.  
25 Creditors later filed a Motion to Reopen Chapter 7 Case  
26 ("Motion") on August 28, 2012, seven months after the case was  
27 closed. The record provides no explanation for the delay. By  
28 the Motion, Creditors requested that the bankruptcy court reopen

1 the case to allow Creditors to examine Debtors under oath as to  
2 allegedly concealed assets that would be subject to liquidation  
3 and distribution to Debtors' creditors.

4 While the Creditors' appellate briefs reference a  
5 \$3,500,000 "asset" allegedly paid to Welch to resolve the  
6 dissolution action, and at the hearing on the Motion Creditors'  
7 counsel made vague reference to a \$5,000,000 sum allegedly paid  
8 to Welch pre-petition, neither the Motion nor Creditors' reply  
9 ("Reply") references any specific asset in existence or to be  
10 discovered. Instead, Creditors alleged in the Motion and Reply  
11 that they were led to believe there was some potential for a  
12 distribution of assets when the case was converted from a  
13 no-asset to an asset case by Trustee Shapiro, and further that  
14 Creditors had "specific knowledge about the tactics commonly  
15 employed by Debtors to secret assets away from the reach of  
16 their creditors."

17 The Motion was first heard on April 24, 2013, before the  
18 Honorable Linda B. Riegler. From our review of the case docket,<sup>4</sup>  
19 it appears the delay between the filing of the Motion and the  
20 April 24, 2013 hearing was entirely due to Creditors' delay in  
21 scheduling the hearing; Appellants do not assert otherwise. At  
22 the hearing, Judge Riegler expressed that she was unlikely to  
23 grant the Motion because discharge had been entered over a year  
24 earlier, in August of 2011, and she ultimately continued the

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25 <sup>4</sup> We obtained this information by reviewing the items on the  
26 bankruptcy court's automated bankruptcy case docket in the  
27 Debtors' bankruptcy case. We may take judicial notice of the  
28 contents and filing of these items. See O'Rourke v. Seaboard  
Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th  
Cir. 1989).

1 hearing because Creditors had failed to provide Debtors with  
2 notice of the hearing.

3 The excerpt of the transcript from the April 24, 2013,  
4 hearing does not reflect that Judge Riegler continued the hearing  
5 to a particular date, but on November 1, 2013, Creditors filed a  
6 Notice of Hearing for the Motion for November 27, 2013. It is  
7 unclear from the record why there was a seven-month delay  
8 between the first hearing on the Motion and the second hearing.  
9 The docket and record seems to indicate, however, that the delay  
10 was due to Creditors' delay in re-noticing the hearing;  
11 Appellants do not assert otherwise.

12 On November 14, 2013, Debtors filed an Opposition to the  
13 Motion. Debtors argued that the Motion was untimely and that  
14 Creditors failed to present evidence to support the proposition  
15 that Debtors concealed assets. On November 22, 2013, Creditors  
16 filed a Reply to Debtors' Opposition.

17 At the hearing on November 27, 2013, the Honorable Bruce T.  
18 Beesley presiding, the bankruptcy court denied the Motion. The  
19 excerpt of transcript reflects that Creditors' counsel stated at  
20 the November 27, 2013, hearing that Welch was supposed to submit  
21 additional documentation regarding "where the money went," but  
22 that these documents were never submitted. Creditors' counsel  
23 further expressed to the court that they were never given notice  
24 of the appointment of the new trustee, discharge, or closing of  
25 the case. Finally, Creditors' counsel asked the court to reopen  
26 the case to conduct a Rule 2004 examination to find the  
27 information Welch was supposed to have provided to the trustee,  
28 conceding that Creditors delayed in seeking to reopen but

1 arguing that where there is a potential for recovery for  
2 creditors there is "no time line under the bankruptcy code that  
3 precludes reopening the bankruptcy case." The court, in  
4 response, finding that Creditors had delayed in filing the  
5 Motion and did not exercise their other remedies, found lack of  
6 good grounds to reopen and denied the Motion.

7 An order was entered denying the Motion on February 6,  
8 2014. On February 20, 2014, Creditors timely filed a notice of  
9 appeal.

#### 10 JURISDICTION

11 The bankruptcy court had jurisdiction under 28 U.S.C.  
12 §§ 1334, 157(b) (2) (A) and (O). We have jurisdiction under  
13 28 U.S.C. § 158.

#### 14 ISSUE

15 Whether the bankruptcy court abused its discretion when it  
16 denied Creditors' Motion because Creditors delayed in filing the  
17 Motion and did not exercise their other remedies, such as timely  
18 requesting a 2004 examination.

#### 19 STANDARD OF REVIEW

20 Denial of a motion to reopen a bankruptcy case is reviewed  
21 for abuse of discretion. See Weiner v. Perry, Settles & Lawson,  
22 Inc. (In re Weiner), 161 F.3d 1216, 1217 (9th Cir. 1998); Lopez  
23 v. Specialty Restaurants, Inc. (In re Lopez), 283 B.R. 22, 26  
24 (9th Cir. BAP 2002). Similarly, a bankruptcy court's exercise  
25 of its equitable powers is reviewed for an abuse of discretion.  
26 Baker v. Delta Air Lines, Inc., 6 F.3d 632, 639 (9th Cir. 1993).

27 The Panel applies a two-part test to determine whether the  
28 bankruptcy court abused its discretion. See United States v.

1 Hinkson, 585 F.3d 1247, 1261-63 (9th Cir. 2009) (en banc). A  
2 bankruptcy court abuses its discretion if it applies an  
3 incorrect legal standard, or misapplies the correct legal  
4 standard, or if its factual findings are illogical, implausible,  
5 or without support from evidence in the record. Hinkson,  
6 585 F.3d at 1262.

7 We may affirm on any ground supported by the record, even  
8 if the ground was not relied upon by the bankruptcy court.  
9 Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency,  
10 322 F.3d 1064, 1076-77 (9th Cir. 2003).

#### 11 **DISCUSSION**

12 Appellants raise two main issues on appeal: (1) whether the  
13 bankruptcy court abused its discretion when it denied the Motion  
14 and (2) whether cause existed to grant the Motion.

15 "Application to have the estate reopened may be made by an  
16 'interested party' who would be benefitted by the reopening."  
17 In re Mullendore, 741 F.2d 306, 308 (10th Cir. 1984) (citations  
18 omitted). Pursuant to section 350(b), the court may reopen a  
19 closed bankruptcy case to administer assets, to accord relief to  
20 the debtor or "for other cause." § 350(b). Rule 5010 provides:

21 A case may be reopened on motion of the debtor or other  
22 party in interest pursuant to § 350(b) of the Code. In  
23 a chapter 7, 12, or 13 case a trustee shall not be  
24 appointed by the United States trustee unless the court  
determines that a trustee is necessary to protect the  
interests of creditors and the debtor or to insure  
efficient administration of the case.

25 Rule 5010.

26 "While the Code does not define 'other cause' for purposes  
27 of reopening a case under section 350(b), the decision to reopen  
28 or not is discretionary with the court, which may consider

1 numerous factors including equitable concerns, and ought to  
2 emphasize substance over technical considerations." Emmerling  
3 v. Batson (In re Emmerling), 223 B.R. 860, 864 (2d Cir. BAP  
4 1997) (citations omitted); see also Matter of Bianucci, 4 F.3d  
5 526, 528 (7th Cir. 1993); Ashe v. Ashe (In re Ashe), 228 B.R.  
6 457, 461 (C.D. Cal. 1998).

7 As explained by this Panel in Menk v. Lapaqlia  
8 (In re Menk), 241 B.R. 896, 916-17 (9th Cir. BAP 1999):

9 In short, the motion to reopen legitimately presents  
10 only a narrow range of issues: whether further  
11 administration appears to be warranted; whether a  
12 trustee should be appointed; and whether the  
13 circumstances of reopening necessitate payment of  
14 another filing fee. Extraneous issues should be  
15 excluded.

16 Further, a bankruptcy court may consider a number of  
17 nonexclusive factors in determining whether to reopen, including  
18 (1) the length of time that the case has been closed;  
19 (2) whether the debtor would be entitled to relief if the case  
20 were reopened; and (3) the availability of nonbankruptcy courts,  
21 such as state courts, to entertain the claims. In re Antonious,  
22 373 B.R. 400, 405-06 (Bankr. E.D. Pa. 2007). Bankruptcy Courts  
23 can also consider whether any parties would be prejudiced were  
24 the case reopened or not. In re Otto, 311 B.R. 43, 47 (Bankr.  
25 E.D. Pa. 2004).

#### 26 **A. Lack of Diligence in Seeking Relief**

27 While there is no express time period under § 350 within  
28 which a motion to reopen must be filed, the request to reopen  
must be made within a "reasonable" time, and what constitutes  
reasonableness is determined on a totality basis. See, e.g.,  
Matter of Pagan, 59 B.R. 394 (D.P.R. 1986) (denying motion to

1 reopen under a laches analysis where movant had knowledge of the  
2 bankruptcy, but waited four years to file the motion);

3 Stackhouse v. Plumee (In re Plumee), 236 B.R. 606, 610-11 (E.D.  
4 Va. 1999) ("in deciding whether to reopen an estate, the length  
5 of time between the estate's closing and the motion to reopen it  
6 should be 'of crucial significance' to the bankruptcy court.

7 '[A]s the time between closing of the estate and its reopening  
8 increases, so must also the cause for reopening increase in  
9 weight.'" (citation omitted). As stated on this point by the  
10 Seventh Circuit in Redmond v. Fifth Third Bank, 624 F.3d 793,  
11 799 (7th Cir. 2010 ):

12 The passage of time weighs heavily against reopening.  
13 The longer a party waits to file a motion to reopen a  
14 closed bankruptcy case, the more compelling the reason  
15 to reopen must be. In assessing whether a motion is  
timely, courts may consider the lack of diligence of  
the party seeking to reopen and the prejudice to the  
nonmoving party caused by the delay.

16 Redmond, 624 F.3d at 799 (citations omitted).

17 Here, the bankruptcy court determined that Creditors' delay  
18 in filing the Motion was significant. Creditors were well aware  
19 of Debtors' bankruptcy, as they had notice of the May 27, 2011,  
20 petition date, and actively participated in, at least, Debtors'  
21 § 341(a) meeting on August 22, 2011. Nonetheless, Creditors did  
22 not seek permission to conduct a Rule 2004 examination until  
23 more than two months after the Debtors' case closed on  
24 January 18, 2012, or more than ten months after the case was  
25 filed. More importantly, Creditors thereafter did not file the  
26 Motion until August 28, 2012, five months after seeking the  
27 Rule 2004 examination and more than eight months after the case  
28 closed, and then inexplicably did not set the Motion for hearing

1 until eight months later on April 24, 2013. Because Creditors  
2 initially failed to serve Debtors with notice of the Motion, the  
3 April 24, 2013 hearing then had to be continued, and Creditors  
4 delayed again in waiting until November 1, 2013, to give notice  
5 of the continued hearing date on November 27, 2013. Ultimately,  
6 due entirely to Creditors' lack of diligence, the Motion was not  
7 heard until more than a year after the Motion was filed, and  
8 almost two years after the case had been closed.

9 Creditors concede without explanation that they were solely  
10 responsible for this delay. As Creditors' counsel opaquely  
11 acknowledged at the hearing on the Motion: "there were problems  
12 on my clients' side and there was a delay on my clients' side in  
13 asking to reopen." Given the record before the bankruptcy  
14 court, where (i) Creditors had substantial pre-petition  
15 experience with Welch as former business partners and litigation  
16 adversaries, (ii) Creditors had notice of and actively  
17 participated in the bankruptcy case, and (iii) because of  
18 Creditors' numerous failures the hearing on the Motion did not  
19 take place until almost two years after the case was closed, it  
20 was not an abuse of discretion for the bankruptcy court to find  
21 that the delay in seeking to reopen the case was unreasonable  
22 under the circumstances.

23 On this point we echo the comments of the district court in  
24 In the Matter of Pagan, which stated, in denying a motion to  
25 reopen a bankruptcy case, that:

26 We note that equity assists the vigilant and diligent,  
27 not those who sleep on their rights. Appellants'  
28 actions after receiving notice of the bankruptcy  
constitute dilatory behavior under the circumstances.

1 Pagan, 59 B.R. 394 at 397. To that end, we find unpersuasive  
2 Appellants' arguments that Creditors' failure to promptly seek a  
3 Rule 2004 examination was caused by the lack of notice of  
4 several § 341(a) meetings. Creditors clearly were familiar with  
5 Debtors at the time the bankruptcy case was filed, had apparent  
6 reason to believe Debtors were hiding assets, and actively  
7 participated in the bankruptcy case. Nonetheless, at every turn  
8 in the course of defending their interests in Debtors' case,  
9 Creditors' behavior was inexplicably dilatory.

10 In this light, and while creditors are certainly entitled to  
11 notice of § 341(a) meetings as a general rule, the alleged  
12 partial failure of such notice, along with some level of  
13 confusion caused by the substitution of trustees, is  
14 insufficient in the totality of circumstances to excuse  
15 Creditors' delay in protecting their rights. It is common  
16 practice for a chapter 7 trustee to orally announce the  
17 continued § 341(a) meeting date at the conclusion of the  
18 meeting, which would negate the obligation to give notice of the  
19 continued meeting, and here Creditors appeared at at least one  
20 § 341(a) meeting. Moreover, Creditors were aware of the filing  
21 of the case but failed to seek a Rule 2004 examination during  
22 the almost eight months the case was open, nor did they take  
23 minimal steps to monitor the case such as filing a request for  
24 special notice or periodically viewing the docket  
25 electronically.

26 Finally, Creditors' counsel was sent BNC notice of the  
27 discharge on August 29, 2011. Creditors were thereby, at a  
28 minimum, on constructive notice that the closing of Debtors'

1 case was imminent. However, the record does not reflect any  
2 inquiry by Appellants as to the status of the case or any effort  
3 to set a Rule 2004 exam until after the case was closed. This  
4 is particularly compelling given the close and litigious pre-  
5 petition relationship between the parties, and supports the  
6 conclusion that the bankruptcy court's ruling was not an abuse  
7 of discretion.

8 As such, the bankruptcy court did not err when it considered  
9 the delay in seeking to reopen as cause to deny the Motion.

10 **B. No prima facie proof that case was not fully administered**

11 With respect to the potential for recovery for the estate,  
12 the bankruptcy court has the duty to reopen an estate whenever  
13 prima facie proof is made that it has not been fully  
14 administered. Lopez v. Specialty Restaurants Corp.  
15 (In re Lopez), 283 B.R. 22, 27 (9th Cir. BAP 2002) (citing Kozman  
16 v. Herzig (In re Herzig), 96 B.R. 264, 266 (9th Cir. BAP 1989)).  
17 "In particular, it is an abuse of discretion to deny a motion to  
18 reopen where assets of such probability, administrability, and  
19 substance appear to exist as to make it unreasonable under all  
20 the circumstances for the court not to deal with them." Id.  
21 (internal quotation marks omitted). "A motion to reopen can be  
22 denied, however, where the chance of any substantial recovery  
23 for creditors appears too remote to make the effort worth the  
24 risk." Lopez, 283 B.R. at 27 (internal quotation marks  
25 omitted).

26 As to Creditors' contention that the case had not been fully  
27 administered, Creditors merely state in the Motion that:

28 Creditors have suspected that Debtors are concealing

1 substantial assets that would be subject to liquidation  
2 and distribution to their creditors. . . . these  
3 Creditors have specific knowledge about the tactics  
commonly employed by Debtors to secret assets away from  
the reach of their creditors.

4 Motion, page 3, lines 27-28, page 4, lines 4-5.

5 Similarly, Creditors contend in their Reply that:

6 Creditors are not making this request with a light  
7 heart and mere speculation. Creditors were business  
8 associates of the Debtors and know them well, and  
9 although Debtors have argued that there are no specific  
allegations about Creditors' knowledge of Debtors'  
activities, facts regarding Debtors' true finances may  
come to light during a debtor examination.

10 Reply, page 2, lines 10-13 (emphasis added).

11 Noting the business relationship and subsequent prolonged  
12 litigation between the parties (which would presumably result in  
13 a more detailed understanding of the existence of Debtors'  
14 alleged substantial assets and/or the tactics used to hide  
15 them), and at the same time the lack of detail regarding the  
16 "tactics" allegedly employed by Debtors along with only  
17 unsubstantiated and vague assertions insinuating the possible  
18 existence of some undefined asset (be it the \$3,500,000 "asset"  
19 referred to in Appellants' appeal briefs that was allegedly paid  
20 to Debtors at some point pre-petition, the \$5,000,000 "payment"  
21 referred to by Creditors' counsel during the hearing on the  
22 Motion, or otherwise), there is nothing in the record to  
23 establish prima facie proof the case was not fully administered.

24 Moreover, while Appellants assert that Debtors never  
25 produced certain documents requested by Trustee Schwartz,er,  
26 including settlement documents regarding the \$3,500,000 offer of  
27 judgment, Creditors conceded at oral argument on appeal that  
28 they never followed up with Trustee Schwartz,er or Debtors to

1 confirm whether such documents were in fact ever produced. The  
2 lack of diligence by Creditors in this regard further serves to  
3 undermine the existence and substance of any hidden assets.  
4 Even though Creditors' focus in seeking a Rule 2004 examination  
5 reflects that Creditors needed to conduct an investigation to  
6 identify and locate allegedly hidden assets, these facts warrant  
7 denial since there was no showing to support a finding that  
8 there was a chance of substantial recovery for creditors. See  
9 Lopez, 283 B.R. at 27.

10 Based on the foregoing, the bankruptcy court did not abuse  
11 its discretion in denying the Motion given the lack of any  
12 specific asset and the mere speculative prospect (much less a  
13 substantial one) of any ultimate recovery for creditors. See  
14 id.

### 15 **C. Prejudice to Debtors upon Reopening**

16 "In the absence of some meaningful prejudice, a court of  
17 equity would abuse its discretion by barring the reopening of a  
18 case." In re Emmerling, 223 B.R. at 865. This Panel has found  
19 that a bankruptcy court abused its discretion where it denied a  
20 debtor's motion to reopen the case to schedule an omitted cause  
21 of action based on debtor's bad faith. Lopez, 283 B.R. at 22.

22 Where, as here, there is no evidence of any asset (or  
23 likelihood of discovering any asset) to be recovered for  
24 creditors, notwithstanding the extensive pre-petition  
25 relationship between the parties and where Creditors had ample  
26 opportunity during the pendency of the case to investigate  
27 potential assets, and given that the chapter 7 trustee  
28 implicitly determined there were no assets worth pursuing,

1 reopening the case would cause meaningful prejudice to Debtors.  
2 Among other things, reopening the case to allow Creditors to  
3 conduct a Rule 2004 examination would subject Debtors to  
4 examination and additional litigation fees more than two years  
5 after they had received their discharge. Given these  
6 circumstances the bankruptcy court did not abuse its discretion  
7 in denying the Motion.

8 **CONCLUSION**

9 Based on our review of the record, we conclude that the  
10 court below did not abuse its discretion when it denied the  
11 Motion. We therefore AFFIRM the bankruptcy court's order.