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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	SC-15-1034-FJuKi
)		
MARGARITA KOCHETOV aka RITA)	Bk. No.	95-11446-LA7
YUSSOUPOVA,)		
)		
Debtor.)		
_____)		
)		
MARGARITA KOCHETOV aka RITA)		
YUSSOUPOVA,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
CALIFORNIA EMPLOYMENT)		
DEVELOPMENT DEPARTMENT,)		
)		
Appellee.)		
_____)		

Argued and Submitted on March 17, 2016
at Pasadena, California

Filed - March 25, 2016

Appeal from the United States Bankruptcy Court
for the Southern District of California

Honorable Louise DeCarl Adler, Bankruptcy Judge, Presiding

Appearances: Appellant Margarita Kochetov aka Rita Yussoupova
argued pro se; Elisa B. Wolfe-Donato argued for
Appellee California Employment Development
Department.

Before: FARIS, JURY, and KIRSCHER, Bankruptcy Judges.

* 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 8024-1.

1 **INTRODUCTION**

2 Appellant/chapter 7¹ debtor Margarita Kochetov, now known as
3 Rita Yussoupova ("Ms. Yussoupova"), appeals from the bankruptcy
4 court's order denying her motion to reopen her chapter 7 case
5 ("Motion to Reopen"). We hold that the bankruptcy court abused
6 its discretion when it declined to reopen her case based upon the
7 passage of time. Accordingly, we REVERSE and REMAND.

8 **FACTUAL BACKGROUND²**

9 Between 1991 and 1993, Ms. Yussoupova operated a small
10 clothing business under the name R.K. Sewing Co. During this
11 time, she hired people to perform certain services; she claimed
12 that all of the workers were independent contractors and not
13 employees.

14 In 1993, Ms. Yussoupova discontinued her business operations
15 and began working at an apparel manufacturing company. In
16 September 1995, she was contacted by an auditor at the state's
17 Employment Development Department ("EDD") who alleged that
18 Ms. Yussoupova owed unpaid unemployment taxes accrued during
19 R.K. Sewing's operations. Ms. Yussoupova denied that she owed
20 any taxes, arguing that all of the workers were independent
21 contractors rather than employees. However, she lacked paperwork

22
23 ¹ Unless specified otherwise, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
25 "Rule" references are to the Federal Rules of Bankruptcy
26 Procedure, Rules 1001-9037, and all "Civil Rule" references are
27 to the Federal Rules of Civil Procedure, Rules 1-86.

28 ² Ms. Yussoupova presents us with a limited record. We have
exercised our discretion to review the bankruptcy court's docket,
as appropriate. See Woods & Erickson, LLP v. Leonard (In re AVI,
Inc.), 389 B.R. 721, 725 n.2 (9th Cir. BAP 2008).

1 to support this contention, since all records were allegedly
2 destroyed in a fire.

3 On October 19, 1995, Ms. Yussoupova initiated a "no asset"
4 chapter 7 case. She received her discharge on February 3, 1996,
5 and the case was closed in early 1996.

6 While the bankruptcy case was pending, EDD issued an
7 estimated assessment for \$672 and pursued collection despite
8 Ms. Yussoupova's protests. In March 1996, Ms. Yussoupova met
9 twice with representatives of EDD. Ms. Yussoupova alleged that,
10 at the conclusion of the second meeting, the auditor informed her
11 that EDD would look into her case and notify her if any
12 additional action was necessary.

13 After fifteen years of silence, in September 2011, EDD sent
14 Ms. Yussoupova's employer a notice of Earnings Withholding Order
15 for Taxes ("EWOT"). EDD alleged that Ms. Yussoupova owed
16 approximately \$2,563 in unpaid unemployment insurance taxes
17 (which had increased since the 1995 assessment due to interest
18 and penalties).

19 Ms. Yussoupova claimed that the assessment had been
20 discharged in bankruptcy and the EWOT was the first indication in
21 fifteen years that the debt was not discharged.

22 Ms. Yussoupova explored various avenues to challenge the
23 assessment. She sought relief before the California Unemployment
24 Insurance Appeals Board but was unsuccessful.

25 Ms. Yussoupova then retained an attorney to reopen her
26 chapter 7 case. In January 2013, he filed a motion to reopen,
27 but the court denied it due to procedural defects.

28 On November 21, 2014, Ms. Yussoupova, proceeding pro se,

1 again moved to reopen her bankruptcy case. Ms. Yussoupova
2 simultaneously initiated an adversary proceeding, claiming that
3 the debt was discharged in 1996. EDD opposed the Motion to
4 Reopen, arguing, inter alia, that laches barred reopening such an
5 old case and that the tax assessment is nondischargeable.

6 The bankruptcy court agreed with EDD, stating that
7 (1) reopening the case would "require the EDD to delve into
8 records and recollections that are 20 years old"; (2) it is the
9 debtor's responsibility to challenge the nondischargeability of a
10 tax debt; and (3) "the interest in finality outweighs the
11 debtor's possible need to have the dischargeability of a debt
12 . . . determined by this court."

13 Ms. Yussoupova timely appealed the order.

14 **JURISDICTION**

15 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
16 §§ 1334, and 157(b)(1). We have jurisdiction under 28 U.S.C.
17 § 158.

18 **ISSUE**

19 Whether the bankruptcy court erred in denying
20 Ms. Yussoupova's Motion to Reopen.

21 **STANDARD OF REVIEW**

22 The denial of a motion to reopen a bankruptcy case is
23 reviewed for abuse of discretion. Staffer v. Predovich
24 (In re Staffer), 306 F.3d 967, 971 (9th Cir. 2002) (citing Weiner
25 v. Perry, Settles & Lawson, Inc. (In re Weiner), 161 F.3d 1216,
26 1217 (9th Cir. 1998)).

27 To determine whether the bankruptcy court has abused its
28 discretion, we conduct a two-step inquiry: (1) we review de novo

1 whether the bankruptcy court "identified the correct legal rule
2 to apply to the relief requested" and (2) if it did, we consider
3 whether the bankruptcy court's application of the legal standard
4 was illogical, implausible or "without support in inferences that
5 may be drawn from the facts in the record." United States v.
6 Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009) (en banc).
7 "If the bankruptcy court did not identify the correct legal rule,
8 or its application of the correct legal standard to the facts was
9 illogical, implausible, or without support in inferences that may
10 be drawn from the facts in the record, then the bankruptcy court
11 has abused its discretion." USAA Fed. Sav. Bank v. Thacker
12 (In re Taylor), 599 F.3d 880, 887-88 (9th Cir. 2010) (citing
13 Hinkson, 585 F.3d at 1261-62).

14 DISCUSSION

15 **A. The bankruptcy court has discretion to reopen a closed case.**

16 Section 350(b) states that "[a] case may be reopened in the
17 court in which such case was closed to administer assets, to
18 accord relief to the debtor, or for other cause." A dispute
19 regarding dischargeability is cause for reopening a closed case.
20 See Menk v. Lapaglia (In re Menk), 241 B.R. 896, 910 (9th Cir.
21 BAP 1999) (Section "350, providing for reopening of cases,
22 provides one **possible** procedure for a determination of
23 dischargeability and related issues after a case is closed."
24 (citation omitted) (emphasis in original)); In re Ford, 87 B.R.
25 641, 644-45 (Bankr. D. Nev. 1988) (A court "may reopen for
26 purposes of permitting an action to be filed to determine the
27 dischargeability [of a debt] under section 523(a)(3).").

28 "[A]lthough a motion to reopen is addressed to the sound

1 discretion of the bankruptcy court, 'the court has the duty to
2 reopen an estate whenever prima facie proof is made that it has
3 not been fully administered.'" Lopez v. Speciality Restaurants
4 Corp. (In re Lopez), 283 B.R. 22, 27 (9th Cir. BAP 2002) (citing
5 Kozman v. Herzig (In re Herzig), 96 B.R. at 264, 266 (9th Cir.
6 BAP 1989)). "[R]eopening a case is typically ministerial and
7 'presents only a narrow range of issues: whether further
8 administration appears to be warranted; whether a trustee should
9 be appointed; and whether the circumstances of reopening
10 necessitate payment of another filing fee.'" Id. at 26 (quoting
11 In re Menk, 241 B.R. at 916-17).

12 **B. The bankruptcy court abused its discretion by refusing to**
13 **reopen Ms. Yussoupova's case on the basis of laches.**

14 The bankruptcy court held that laches and the interest of
15 finality precluded the reopening of Ms. Yussoupova's case. This
16 was inconsistent with Ninth Circuit case law that laches and the
17 passage of time cannot serve as a basis to deny a motion to
18 reopen. Accordingly, we hold that the bankruptcy court abused
19 its discretion by denying the Motion to Reopen.

20 In Menk, we made clear that it is inappropriate to consider
21 substantive issues on a motion to reopen. We noted that "the
22 reopening of a closed bankruptcy case is a ministerial act that
23 functions primarily to enable the file to be managed by the clerk
24 as an active matter and that, by itself, lacks independent legal
25 significance and determines nothing with respect to the merits of
26 the case." In re Menk, 241 B.R. at 913 (citations omitted). We
27 held that it is improper to decide the merits of a case when
28 considering a motion to reopen:

1 The better practice is the procedurally correct
2 one of requiring merits issues to be left to the
3 underlying litigation and relying on Rule 9011 and the
4 court's inherent sanctioning authority to constrain
5 inappropriate litigation.

6 Id. at 916 (citations omitted). We concluded that "the motion to
7 reopen legitimately presents only a narrow range of issues:
8 whether further administration appears to be warranted; whether a
9 trustee should be appointed; and whether the circumstances of
10 reopening necessitate payment of another filing fee. Extraneous
11 issues should be excluded." Id. at 916-17; see also First Am.
12 Title Co. v. Daniels (In re Daniels), 34 B.R. 782, 784 (9th Cir.
13 BAP 1983) ("The reopening of a case is [a] simple mechanical
14 device by which the administration of the estate may be resumed
15 or continued. Nothing concerning the merits is considered when
16 the motion is granted." (citations omitted)).

17 Subsequently, the Ninth Circuit expanded upon our decision
18 in Menk and declined to apply laches to bar reopening a case six
19 years after it had closed. In Staffer, a creditor sought to
20 reopen a chapter 7 bankruptcy case to file a nondischargeability
21 complaint. The bankruptcy court denied reopening on the basis of
22 laches. The court of appeals noted that:

23 [the debtor] appears to argue both that laches bars the
24 preliminary motion to reopen, and that laches bars the
25 underlying § 523(a)(3)(B) action that [the creditor]
26 ultimately seeks to bring. The bankruptcy court
27 collapsed the two questions into one. Under its
28 reasoning, if the underlying action is barred by
29 laches, a motion to reopen should not be granted. The
30 BAP reached a contrary conclusion, citing In re Menk,
31 241 B.R. 896 (9th Cir. BAP 1999). It held that the
32 question of whether [the debtor] could successfully
33 assert the affirmative defense of laches to [the
34 creditor's] nondischargeability action was an
35 extraneous issue at the motion-to-reopen stage, and was
36 not properly addressed prior to the filing [of] the
37 complaint. We agree with the BAP.

1 In re Staffer, 306 F.3d at 972.

2 The court quoted and relied extensively on Menk, stating
3 that "although 'it is tempting to say that the reopening motion
4 entitles the court to perform a gatekeeping function that
5 justifies inquiring in to the related relief that will be
6 sought,' such inquiries are in fact inappropriate." Id. (quoting
7 In re Menk, 241 B.R. at 916). It held that, "[b]ecause the
8 bankruptcy court was presented only with a motion to reopen and
9 not with the nondischargeability complaint itself, the BAP was
10 correct to hold that the question of applicability of laches to
11 that complaint was not properly before the court." Id.³

12 Under Staffer and Menk, the bankruptcy court should not have
13 denied the Motion to Reopen on the basis of laches. See also
14 In re Dunning Bros. Co., 410 B.R. 877, 888 (Bankr. E.D. Cal.
15 2009) (holding that a 73-year interval does not preclude
16 reopening).

17 **2. The bankruptcy court may consider the defense of laches**
18 **(and all other substantive issues) after reopening the**
19 **case.**

20 Our holding does not imply that the court may not consider
21 EDD's defense of laches when adjudicating the merits of
22 Ms. Yussoupova's case. As the Ninth Circuit held in Staffer,
23 after the court reopens the case, it may consider applicable
24 substantive issues and defenses, such as laches:

25 **The BAP correctly left open the possibility that,**

26 ³ The bankruptcy court relied on United States v. Ellsworth
27 (In re Ellsworth), 158 B.R. 856 (M.D. Fla. 1993), and
28 In re Kapsin, 265 B.R. 778 (Bankr. N.D. Ohio 2001). Like the
string of cases cited by EDD, these decisions are inconsistent
with binding Ninth Circuit precedent and are distinguishable.

1 **upon the filing of [the creditor's] § 523(a) (3) (B)**
2 **complaint, [the debtor] might assert laches as a**
3 **defense.** As we recently held in Beaty v. Selinger
4 (In re Beaty)[,] 306 F.3d 914 (9th Cir. 2002), laches
5 can, under certain limited circumstances, bar a
6 § 523(a) (3) (B) nondischargeability action.

7 In re Staffer, 306 F.3d at 973 (emphasis added).

8 In the present case, we understand Ms. Yussoupova to be
9 essentially arguing two distinct points: (1) that she did not owe
10 any unemployment insurance taxes; and (2) that, even if she owed
11 such a debt, it was discharged in 1996, and she has no further
12 liability.

13 As to the first question, the court must determine whether
14 the facts indicate that Ms. Yussoupova is liable for unemployment
15 insurance taxes. See § 505(a) (1) ("the court may determine the
16 amount or legality of any tax, any fine or penalty relating to a
17 tax . . ."). This issue likely implicates a factual inquiry
18 into, among other things, whether Ms. Yussoupova's workers were
19 employees or independent contractors. Making this factual
20 determination may be difficult, especially since Ms. Yussoupova
21 says her business records were destroyed in a fire years ago.
22 The bankruptcy court might properly apply laches to this
23 situation. See In re Staffer, 306 F.3d at 973.

24 But these considerations do not apply to the second
25 question: whether the alleged debt was discharged in 1996. The
26 court must decide (1) whether the unemployment insurance tax was
27 an excise tax or otherwise nondischargeable; and (2) the
28 operative time period concerning the taxes, i.e., when the tax

1 returns were due under state law.⁴ These are mostly legal
2 questions; the court will probably not have to conduct any
3 significant factual analysis that could be impaired by the
4 passage of time.

5 More importantly, the passage of time should not justify
6 denial of a motion to reopen in order to implement or enforce the
7 discharge. The discharge injunction never expires. See McGhan
8 v. Rutz (In re McGhan), 288 F.3d 1172, 1176 (9th Cir. 2002)
9 (“When a debtor is discharged under the Bankruptcy Code, the
10 discharge operates as a permanent injunction against any attempt
11 to collect or recover on a . . . debt.” (citations and internal
12 quotation marks omitted)); In re Menk, 241 B.R. at 908 (“the
13 debtor receives a discharge, eliminating personal liability and
14 operating as a permanent injunction to enforce that elimination
15 of liability”). Employing laches to deny the debtor access to
16 the bankruptcy court means that, as a practical matter, the
17 passage of time diminishes the discharge. But courts may not use
18 equitable doctrines (like laches) to override clear statutory
19 commands (like the discharge). See Law v. Siegel, 134 S. Ct.
20 1188, 1194-95 (2014) (“We have long held that ‘whatever equitable
21 powers remain in the bankruptcy courts must and can only be
22 exercised within the confines of’ the Bankruptcy Code.” (citation
23 omitted)). The application of laches to bar a debtor’s effort to
24 enforce the discharge improperly creates a time limit on a right

25
26 ⁴ EDD urges us to determine that the tax assessment is a
27 nondischargeable excise tax. This issue was not decided by the
28 bankruptcy court, and we decline to consider this issue for the
first time on appeal. See Ezra v. Seror (In re Ezra), 537 B.R.
924, 932 (9th Cir. BAP 2015).

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CONCLUSION

For the reasons set forth above, we conclude that the bankruptcy court abused its discretion in refusing to reopen Ms. Yussoupova's case. Accordingly, we REVERSE the bankruptcy court's order and REMAND this case for proceedings consistent with our decision.