

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

GERALD J. MARTZ *d/b/a* MARTZ'S : Case No. 01-23913T
PHILADELPHIA CHEESE STEAKS AND :
HOAGIES and JOAN D. MARTZ, :
Debtor(s) :

ORDER

AND NOW, this 20th day of January, 2006, it is ORDERED that Debtors' Motion to Reopen this bankruptcy case so that they may file an appropriate pleading to enforce the discharge Order entered on December 12, 2001 is hereby GRANTED.

IT IS FURTHER ORDERED that Debtors shall, **within seven (7) days of the date of this Order**, file a Certificate of No Response, which indicates that Respondent, Jerry W. Wachter was properly served with the Motion to Reopen but failed to file a Response within the time allotted, along with a proposed Order granting the relief requested in the Motion to Reopen as against Respondent, Jerry W. Wachter.

IT IS FURTHER ORDERED that Debtors shall file, **within thirty (30) days of the date of this Order**, an appropriate pleading seeking to enforce the discharge Order entered on December 12, 2001 with respect to Respondent, GEN Corporation.¹

1. While Debtors assume that Judd v. Wolfe, 78 F.3d 110 (3rd Cir. 1996) controls the outcome of this proceeding, we shall not decide this issue as it is not properly before us at this time. We further note that GEN Corporation raises valid issues relating to the applicability of Judd v. Wolfe to the facts of this case, which include issues of whether this case was indeed properly classified as a no-asset case given the fact that Debtors failed to list the assets of the business known as Martz's Philadelphia Cheese Steaks and Hoagies ("the sandwich shop") on their Schedules and issues of whether GEN Corporation should indeed be classified as an unsecured creditor given the fact that GEN Corporation appears to have held a pre-petition security

IT IS FURTHER ORDERED that Respondent, GEN Corporation **shall have sixty (60) days from the date of this Order** to file an adversary complaint under 11 U.S.C. §§523(a) and/or 727.

IT IS FURTHER ORDERED that the Office of the United States Trustee shall investigate the circumstances surrounding Debtors' failure to list GEN Corporation and Jerry W. Wachter as creditors and the assets of the sandwich shop business which Debtors operated as Martz's Philadelphia Cheese Steaks and Hoagies on their Schedules and file a Report with this Court **within thirty (30) days of the date of this Order**. See generally Boulevard Bank Nat'l. Assoc. v. Baldwin, Civil Action No. 95-MC-0193, 1996 WL 460043 at *2 (E.D. Pa. August 9, 1996).²

Reading, PA

THOMAS M. TWARDOWSKI
United States Bankruptcy Judge

interest in the equipment and inventory of the sandwich shop and given the uncertainty surrounding whether GEN Corporation was in fact served with Debtors' first Motion to Reopen filed on March 15, 2004.

2. We note that while Debtors captioned their bankruptcy petition as "Gerald J. Martz, d/b/a Martz's Philadelphia Cheese Steaks and Hoagies and Joan D. Martz," the evidence establishes that Debtor, Gerald J. Martz ("Mr. Martz"), was incapacitated in an automobile accident in 1987 and that Debtor, Joan D. Martz ("Mrs. Martz"), is his state court appointed guardian. The evidence further establishes that Mrs. Martz executed the Purchase Agreement to purchase the sandwich shop business from GEN Corporation both individually and as guardian for Mr. Martz, and that Mrs. Martz operated the sandwich shop business known as Martz's Philadelphia Cheese Steak and Hoagies along with some of her children. While Mrs. Martz testified that she had a verbal agreement to transfer the sandwich shop business (including its assets) to her son, Jason, she also testified that Jason was never substituted as the lessee under the lease with Jerry W. Wachter or as the purchaser under the Purchase Agreement with GEN Corporation.