UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:	:	
GLENN L. REDCAY,	:	Case No. 03-25835REF
Debtor	:	Chapter 11

MEMORANDUM OPINION

I. INTRODUCTION

Before me is the Motion To Reopen Case To Allow Filing of a Motion To Allow Administrative Claim (the "Motion To Reopen"), filed by the United States Internal Revenue Service (the "IRS") on June 15, 2007. The IRS seeks to reopen this chapter 11 case so that it may file an administrative claim to recover the capital gains tax allegedly incurred by Debtor's bankruptcy estate by the post-confirmation sale of certain assets once owned by Debtor. If this case is reopened, the IRS intends to file a motion to allow the tax as an administrative claim. Both Debtor and Fulton Bank filed Responses opposing the IRS' Motion To Reopen. A hearing was scheduled to be held on the IRS' Motion To Reopen on July 17, 2007, but no testimony was taken. To the contrary, counsel conducted oral argument and agreed to submit the matter on briefs. The parties also agreed that the record on the IRS' Motion to Reopen is to be composed of the filed transcripts of both the oral argument on the IRS' Motion to Reopen on July 17, 2007, and the oral argument at the April 6, 2006 hearing on confirmation of Debtor's chapter 11 plan. The parties' briefs have been filed as agreed and the matter is now ripe for

disposition.

II. FACTUAL/PROCEDURAL BACKGROUND[1]

Debtor, Glenn L. Redcay, filed his voluntary chapter 11 petition on November 3, 2003. On February 25, 2005, this Court approved a stipulation executed by Debtor and Fulton Bank, the senior secured creditor in Debtor's bankruptcy case, which provided for the sale or liquidation of Debtor's business assets, with the sale or liquidation to occur before December 31, 2005. On December 10, 2005, Debtor died without having completed the terms of the stipulation.[2] Fulton Bank agreed, however, to extend the deadline under the stipulation to allow the Executrix of Debtor's decedent's estate time to file and implement a liquidating chapter 11 plan.

On January 26, 2006, the United States Trustee filed a motion to dismiss or convert this case, alleging that Debtor had failed to confirm a chapter 11 plan and had failed to remain current with the filing of monthly operating reports and the payment of statutory fees owed to the United States Trustee. Debtor, through the Executrix of Debtor's decedent's estate, responded to the motion on January 30, 2006, by filing a

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[1]As noted above, no factual hearings were held for either this Motion To Reopen or the confirmation of Debtor's chapter 11 plan. I will therefore take and consider the facts as apparently agreed upon as the basis for counsels' oral arguments.

[2]Bankruptcy Rule 1016 provides for the circumstance of a debtor's death or incompetency, in part, as follows: "If a reorganization . . . is pending under chapter 11 . . . , the case may be dismissed; of if further administration is possible and in the best interests of the parties, the case may proceed and be concluded in the same panner, so far as possible, as though the death . . . had not occurred." Federal Rules of Bankruptcy Procedure 1016.

chapter 11 liquidation plan, a disclosure statement, and three monthly operating reports. The plan set forth four separate classes of claims, as follows:

> Class 1: Administrative Expense Claims. Class 1 creditors are those creditors holding administrative priority claims as defined in Article III.[3]
> Class 2: Fulton Bank. This class consists of any and all claims of the Bank against the deceased debtor's estate, whether known or unknown, secured or unsecured, and specifically includes all such claims secured by certain mortgage liens and assignments of rents held by the Bank against the debtor's Business Assets.
> Class 3: Real Estate Taxes, Municipal Liens and Related Claims. This class consists of all real estate tax and municipal lien claims held in connection with and secured by the Real Estate, including those claims filed by the Lancaster County Tax Claim Bureau and East Cocalico Township.
> Class 4: All other claims. This class consists of all other claims, whether secured, priority or general unsecured, against the deceased debtor's estate, including the claim filed by the Internal Revenue Service.

Debtor's Plan of Reorganization at 4. The plan provided for payment in full of the Class 1 and Class 3 claims and for payment of the Class 2 claim from the net proceeds of the sale of Debtor's assets. The plan categorized Class 4 claims (which included the claim of the IRS) as impaired and anticipated that there would be no funds remaining after payment of the Class 1, 2 and 3 claims to make any distribution to the holders of Class 4 claims.

The IRS, having actual knowledge of the contents of Debtor's chapter 11 plan, nonetheless, did not object to confirmation of the plan and did not attend the

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[3]Article III defines administrative expense claims as follows: "The administrative expenses of the deceased debtor's chapter 11 case allowed pursuant to §503(b) shall be paid in full on the effective date of the Plan unless otherwise ordered by the court in cash or upon such terms as may otherwise be agreed upon by the holders of such allowed administrative expenses."

confirmation hearing held on April 6, 2006.[4] Dave Adams, Esquire, staff counsel for the United States Trustee appeared at the confirmation hearing. Mr. Adams made a brief statement conveying the IRS' concerns about confirmation and its impact on the payment of the capital gains tax that might result from the sale of Debtor's assets. Mr. Adams pointed out, however, that the United States Trustee was not objecting to confirmation. I confirmed the plan on April 6, 2006, facing no unresolved objections.

On July 21, 2006, an agreement for the sale of Debtor's assets for Four Million Five Hundred Thousand Dollars ($4,500,000) was executed by both the Executrix of Debtor's decedent's estate and the purchaser. On August 1, 2006, Debtor filed a Motion To Approve Sale of Real Estate Free and Clear, which I granted in my Order entered on August 29, 2006. On March 19, 2007, Debtor filed a Report of Consummated Sale and this chapter 11 bankruptcy case was closed on March 30, 2007. The IRS filed this Motion To Reopen on June 15, 2007, and the matter is now ripe for decision.

III. LEGAL DISCUSSION.

Section 350(b) of the Bankruptcy Code provides that "a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. §350(b). The decision to reopen a closed bankruptcy case lies within the discretion of the bankruptcy court judge, who is to make the decision based

[4]The Department of Revenue of the Commonwealth of Pennsylvania was the only party that filed an objection to confirmation. The Commonwealth's objection was resolved by a stipulation that was executed by the parties and approved by me on March 14, 2006, prior to the confirmation hearing.

upon the circumstances and equities presented by each individual case. In re Antonious, 373 B.R. 400, 405 (Bankr. E.D. Pa. 2007); In re Otto, 311 B.R. 43, 47 (Bankr. E.D. Pa. 2004). The burden of demonstrating circumstances sufficient to warrant reopening a case is on the moving party. Antonious, 373 B.R. at 405; Otto, 311 B.R. at 47. If the cause of action underlying a motion to reopen lacks merit, however, the motion to reopen should be denied. In re Hardy, 209 B.R. 371, 373 (Bankr. E.D. Va. 1997). In addition, a case will not be reopened if reopening would be futile, *i.e.*, the court cannot provide the moving party with the underlying relief requested. In re Caravona, 347 B.R. 259, 262 (Bankr. N.D. Ohio 2006). Because I conclude, for the reasons that follow, that no capital gains tax was incurred by the chapter 11 bankruptcy estate upon the sale of Debtor's assets, I find that reopening this case would be futile and that cause does not exist to reopen this case. I therefore deny the IRS' Motion to Reopen.

Upon confirmation of a chapter 11 plan, the bankruptcy estate terminates and property of the estate vests in the debtor, unless the plan or the order confirming the plan provides otherwise. 11 U.S.C. §1141(b); In re Linsenmeyer, No. 02-1370, 92 Fed. Appx. 101,102, 2003 WL 22734652, at *2 (6th Cir. Nov. 18, 2003); In re Pheonix Petroleum Co., 278 B.R. 385, 403 (Bankr. E.D. Pa. 2001). In this case, neither the plan nor the order confirming the plan specifies what is to happen to property of the estate upon confirmation. Upon confirmation, therefore, the bankruptcy estate terminated and property of the estate vested in Debtor pursuant to Section 1141(b). Because Debtor was

deceased at the time of confirmation, property of the estate vested in Debtor's decedent's estate, which was the entity that sold Debtor's assets; the decedent's estate, therefore, is the entity responsible for any capital gains tax that might have been incurred.[5] Linsenmeyer, 92 Fed. Appx. at p. 103, 2003 WL 22734652, at *3.

The Sixth Circuit case of In re Linsenmeyer, 92 Fed. Appx., 2003 WL 22734652, is very instructive to my decision. In Linsenmeyer, the chapter 11 debtors settled an adversary proceeding they had filed against their bank. The settlement provided that the bank would lend the debtors $1.8 million which would be used to fund the debtors' chapter 11 plan. The settlement also provided that stock of the bank owned by the debtors would be pledged as partial collateral for the loan and that if the debtors defaulted, the bank could sell the shares. The bankruptcy court thereafter confirmed the debtors' amended chapter 11 plan. The debtors later defaulted on the loan with the bank, which sold the stock. The debtors reported the income from the sale on their individual tax returns, but never paid the tax that resulted from the sale. In the meantime, debtors'

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[5]My review of both the confirmed plan and Debtor's Motion To Approve the Sale of Real Estate Free and Clear show that Debtor's decedent's estate is the entity that sold Debtor's assets. It is also clear to me, therefore, that Debtor's decedent's estate is the entity that is liable for any capital gains tax that might result from the post-confirmation sale of Debtor's assets. Linsenmeyer, 92 Fed. Appx. at p. 103, 2003 WL 22734652, at *3.

Counsel for the United States Trustee, during the April 6, 2006 confirmation hearing, questioned whether the Debtor's decedent's estate might enjoy a stepped up basis for the purpose of determining the extent of any capital gains tax that might be triggered by the post-confirmation sale of the assets. This tax issue has not been raised or briefed and is not before me. In any event, I do not have jurisdiction over this issue because its resolution does not affect the bankruptcy estate that has already been administered and is now closed. See Pacor, Inc. V. Higgins (In re Pacor, Inc.), 743 F.2d 984, 994 (3d Cir. 1984).

chapter 11 bankruptcy case was closed. Debtors thereafter filed a motion to reopen their chapter 11 bankruptcy case so that a chapter 11 trustee could be appointed to file an amended tax return for the chapter 11 bankruptcy estate, under which the trustee would pay the tax resulting from the sale of the bank stock from the bankruptcy estate. The bankruptcy court denied the debtors' motion to reopen and the district court affirmed. The Sixth Circuit affirmed the decisions of both lower courts denying the debtors' motion to reopen. The Sixth Circuit court first noted that, upon confirmation of the debtors' chapter 11 plan, property of the estate vested in the debtors. The court then ruled that because the stock had been sold after confirmation, the resulting tax liability belonged to the debtors, not to the bankruptcy estate.

Likewise, in the case before me, the sale of assets at issue occurred post-confirmation, at a time when the assets being sold had already vested in Debtor's decedent's estate and were no longer property of Debtor's bankruptcy estate.

To reiterate, the IRS now seeks to reopen this chapter 11 case so that it may file a motion for an administrative claim under 11 U.S.C. §503(b) for the capital gains tax that allegedly resulted from the post-confirmation sale of Debtor's assets. For the IRS to have an administrative claim for this tax under 11 U.S.C. §503(b), however, the tax must have been incurred by, and be the responsibility of, Debtor's bankruptcy estate. As in Linsenmeyer, however, Debtor's assets were sold by the Executrix of Debtor's decedent's estate after Debtor's chapter 11 plan was confirmed. Any capital gains tax that

resulted from the sale, therefore, would be a post-petition, post-confirmation obligation that would be the liability of the entity that sold the assets. In this case, that is Debtor's decedent's estate and not Debtor's bankruptcy estate.[6] For this reason, I find that the IRS' underlying request for an administrative claim for this alleged capital gains tax lacks merit and that reopening this chapter 11 case would be futile. I therefore deny the IRS' Motion To Reopen. See Antonious, 373 B.R. at 405; Otto, 311 B.R. at 47.

In addition, reopening this bankruptcy case to permit the IRS to file and prosecute an administrative claim for the alleged capital gains tax would result in severe prejudice to Fulton Bank and the administrative claimants identified as the holders of Class 1 and Class 3 claims in Debtor's confirmed plan. These creditors and claim-holders reasonably relied upon the binding effect and the finality of the confirmed plan, see 11 U.S.C. §1141(a); see e.g. Eastern Minerals & Chemicals Co. v. Mahan, 225 F.3d 330, 336 n.11 (3d Cir. 2000), and therefore did not object to the subsequent sale of Debtor's assets.[7] To require these creditors to defend against the IRS' attempt to assert a baseless

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[6]In fact, the IRS agrees that the "general rule is that, upon confirmation of a Chapter 11 plan, the assets of the estate revert to debtor and the [bankruptcy] estate would not be liable for post-confirmation taxes due on the sale of debtor's assets." IRS' Memorandum in Support of Motion To Reopen at 3 - 4. The IRS then unsuccessfully attempts to distinguish various cases that uphold this general rule by arguing that the facts of the case before me are out of the ordinary. I disagree and find that the facts of this case fall squarely within the general rule that upon confirmation, the bankruptcy estate terminates and property of the estate vests in the debtor. Any capital gains tax that might have arisen from a post-confirmation sale of a debtor's assets is a post-petition, post-confirmation debt that is not an administrative claim of the bankruptcy estate, but rather is a debt owed by the entity that sold the assets: Debtor's decedent's estate.

[7]These creditors are the entities who presumably would defend against the IRS' attempt to assert an administrative claim because they would likely be the targeted source for the payment

administrative claim would be inequitable, especially because, as is the case here, the IRS had full notice of the terms of Debtor's plan prior to confirmation and chose not to assert an objection.[8] For all of these reasons I find that the IRS' Motion To Reopen must be denied.[9]

An appropriate Order follows.

December 3, 2007

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of such a claim if it were able to be successfully asserted. I have already found, however, for the reasons outlined in the text above, that the IRS' attempt to assert an administrative claim for any capital gains tax incurred upon the post-confirmation sale of Debtor's assets lacks merit.

[8]Because I find that the sale of the property occurred post-confirmation and was conducted by an entity other than the chapter 11 estate, I do not address Debtor's arguments about Debtor's plan constituting both a binding contract between the parties and res judicata on the matter of the IRS' recourse. The IRS was fully aware of the terms of Debtor's proposed plan, but elected not to participate in confirmation. Treatment of the IRS' potential Class 4 Claim was clearly set forth in the plan - to wit, the IRS would be paid on its claim out of the proceeds, if any, remaining after Claim Classes 1, 2, and 3 were paid in full (the plan frankly noted that the parties did not expect any proceeds would be available to pay to Class 4 Claims). Again, however, I do not consider this argument because the sale of assets was not by the estate, but by Debtor's decedent's estate.

[9]Finally, I note that Debtor's brief requests that the IRS be directed to pay the attorneys' fees and costs Debtor incurred in defending the IRS' Motion to Reopen. Debtor, however, has not filed a formal pleading requesting the recovery of attorneys' fees and costs against the IRS. Without commenting on the pros or cons of this matter, I simply note that this issue is not properly before me and I will not address it in the context of this Memorandum Opinion. See generally Jones v. Pittsburgh Nat'l. Ass'n., 899 F.2d 1350, 1357 (3d Cir. 1990).

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In re:	:	
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Debtor	:	Chapter 11

ORDER

AND NOW, this 3rd day of December, upon my consideration of the Motion To Reopen Case To Allow Filing of a Motion To Allow Administrative Claim (the "Motion To Reopen"), filed by the United States Internal Service (the "IRS"), the Responses thereto filed by Debtor and Fulton Bank, and the oral arguments presented and the briefs filed by the parties, and based upon the discussion contained in the accompanying Memorandum Opinion, which constitutes my findings of fact and my conclusions of law,

IT IS HEREBY ORDERED that the IRS' Motion To Reopen is DENIED.

BY THE COURT

RICHARD E. FEHLING
United States Bankruptcy Judge