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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re BYUNG MOON KIM and SYLVIA YOUNG KIM, Debtors.	Case No.: 2:13-bk-21435-RK Chapter 7 MEMORANDUM DECISION DENYING DEBTORS' MOTION TO REOPEN CASE

On February 13, 2014, Debtors filed a motion to reopen this Chapter 7 bankruptcy case to add certain creditors to their bankruptcy schedules (Docket No. 14) (the "Motion"), requesting that the court grant the Motion on the papers without hearing. On February 18, 2014, after considering the Motion, the court issued an order setting the matter for hearing on March 11, 2014 at 3:00 p.m. and issued the following tentative ruling.

This is a Chapter 7 "no asset/no bar date" case. Reopening a case to add an omitted creditor is not necessary in a Chapter 7 "no asset/no bar date" case (where the

court sent a notice directing creditors not to file a proof of claim). (Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors & Deadlines, filed on April 30, 2013, as Docket Entry No. 4); *see also,* 4 March, Ahart and Shapiro, California Practice Guide: Bankruptcy, ¶ 23:133 at 23-15 (2013).

Relief to reopen this "no asset/no bar date" case and add a creditor to the schedules is unnecessary because if the omitted debt is dischargeable under Section 523(a)(3)(A) of the Bankruptcy Code, 11 U.S.C., it was already discharged under Section 727 of the Bankruptcy Code; if the debt is non-dischargeable under Section 523(a)(2)(B) of the Bankruptcy Code, it was not discharged. *Id.* As held by the United States Court of Appeals for the Ninth Circuit in *In re Beezley,* amending the schedules does nothing in this situation. *In re Beezley,* 994 F.3d 1433, 1434 (9th Cir. 1993); *see also,* 4 March, Ahart and Shapiro, California Practice Guide: Bankruptcy, ¶ 23:133 at 23-15. Because decisions of the United States Court of Appeals for the Ninth Circuit, such as in *Beezley,* are controlling on this court, the court should deny the motion.

The cases cited by debtors, *In re Dodge,* 138 B.R. 602, 605 (Bankr. E.D. Cal. 1992), and *In re Russell,* 193 B.R. 568, 549 (Bankr. S.D. Cal. 1996), are not controlling, and are cited for a proposition that is governed by circuit authority in *Beezley*, which the court is bound to apply. *Dodge* did not involve the situation here or in *Beezley* since the debtors in that case requested their bankruptcy case be reopened to avoid a judicial lien pursuant to 11 U.S.C. § 522(f). 138 B.R. at 605. *Russell* involved an unusual situation where the debtors and the creditors had a dispute whether the debt was prepetition subject to the bankruptcy discharge or postpetition not subject to discharge, and the debtors requested the bankruptcy case be reopened so that they could amend their schedules to list the debt as prepetition and that the creditors could have a limited time period to file an adversary proceeding to determine that the debt was nondischargeable. Although the court in *Russell* cited *Beezley* in its opinion, it did not discuss or analyze *Beezley's* holding that it was not an abuse of discretion for the

bankruptcy court not to reopen a "no asset/no bar date" bankruptcy case to let the debtor amend the schedules to add a prepetition debt. 193 B.R. at 569.

In its order entered on February 18, 2014, the court further stated that it was of the tentative opinion that the Motion should be DENIED to amend the schedules to list the disputed debt, but without prejudice to the debtors seeking to reopen the case for other relief to enforce the discharge injunction in this Chapter 7 case pursuant to Section 524 of the Bankruptcy Code, 11 U.S.C., and indicated that before issuing a final ruling on the Motion, the court will set the Motion for hearing on March 11, 2014 at 3:00 p.m. and grant leave to Debtors to file an optional written response to the tentative ruling on or before March 7, 2014.

Debtors did not file a written response to the court's order entered on February 18, 2014 or to the court's tentative ruling, and counsel for Debtors has indicated that Debtors do not intend to offer any further argument at the hearing. Accordingly, the court takes the Motion under submission, vacates the hearing on the Motion set for March 11, 2014, adopts its tentative ruling as its order and will enter a separate order denying the Motion to amend the schedules to list the disputed debt, but without prejudice to the debtors seeking to reopen the case for other relief to enforce the discharge injunction in this Chapter 7 case pursuant to Section 524 of the Bankruptcy Code, 11 U.S.C.

IT IS SO ORDERED. ###

Date: March 10, 2014

Robert Kwan
United States Bankruptcy Judge