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When Can an Individual Close a Subchapter V Case After Plan Confirmation?

By Michael J. Lichtenstein and Hope Gouterman*

In this article, the authors explain that, through an oversight, individuals filing subchapter V are being compelled to leave a case open for three to five years and to file semi-annual reports even though they may have received a discharge and have fully administered their case.

The general purpose of Chapter 11 of the Bankruptcy Code is to allow a reorganization, either for an individual or a company. To encourage smaller companies and individuals who engage in business activities to reorganize, several years ago Congress enacted the Small Business Reorganization Act (the SBRA).[1] The SBRA is designed to allow a more expeditious, efficient reorganization process with a quicker exit from bankruptcy.

Ironically, notwithstanding this goal, several jurisdictions across the country have local rules that fail to distinguish between typical Chapter 11 individual debtors and individuals who file under the SBRA, requiring the filing of post confirmation reports for several years until all plan payments have been completed. Additionally, these local rules do not allow an individual who files under the SBRA to close a case after confirmation even if the reorganization plan was consensual and the debtor received a discharge upon entry of the confirmation order. Rather, under these local rules, a debtor must keep the bankruptcy proceeding open for several years after confirmation solely to file the aforementioned reports.

SMALL BUSINESS REORGANIZATION ACT

The SBRA was introduced to the House of Representatives on June 18, 2019,[2] initially cosponsored by Representative Ben Cline (VA); Antitrust, Commercial, and Administrative Law Subcommittee Chair David Cicilline

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[1] Originally relief under the SBRA was restricted to businesses and individuals engaged in business with total debts less than $2.7 million. In March 2020, the CARES Act increased the debt limit to $7.5 million.

[2] Congressional Record References: Bill History, https://www.congress.gov/bill/116th-congress/house-bill/3311/all-actions?overview=closed#tabs.

(RI); Full Committee Ranking Member Doug Collins (GA); and Representative Steve Cohen (TN). The SBRA was supported by nonpartisan organizations.[3]

On July 23, 2019, the House passed the SBRA.[4] On July 24, 2019, the SBRA was received in the Senate and SBRA – H.R. 3311 – was passed by the Senate on August 1, 2019.[5] The president signed the bill on August 23, 2019 and the SBRA became Public Law No. 116-54,[6] passing without amendment.[7]

The SBRA was a bipartisan measure introduced to streamline the bankruptcy process for small business debtors. In an effort to create efficiency and an increased likelihood of retention with small businesses, the House introduced the SBRA. The idea was that the more accessible (and forgiving) the process for bankruptcy, the more likely small businesses could remain intact, and the better off the owners, employees, suppliers, customers, and others would be.[8]

Three key features of the SBRA are:

(1) Requiring the appointment of an individual to serve as the trustee in a Chapter 11 case filed by a small business debtor, who would perform many of the same duties required of a Chapter 12 trustee;

(2) Requiring such private trustee to monitor the debtor's progress toward confirmation of a reorganization plan; and

(3) Authorizing the court to confirm a plan over the objection of the debtor's creditors, providing such plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.[9]

CLOSING AN SBRA INDIVIDUAL DEBTOR CASE

While the SBRA[10] does not specifically address the closing of a case, Section 350 of the Bankruptcy Code mandates that a court shall close a case after "an

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[3] H.R. Rep No. 116-171 (2019).

[4] Congressional Record References: Bill History, https://www.congress.gov/bill/116th-congress/house-bill/3311/all-actions?overview=closed#tabs.

[5] Id.

[6] Id.

[7] Id.

[8] See In re Progressive Sols., Inc., 615 B.R. 894 (Bankr. C.D. Cal. 2020) (reviewing SBRA legislative history and demonstrating that purpose is efficiency).

[9] H.R. Rep No. 116-171 (2019).

[10] 11. U.S.C. Section 1181 et. seq.

estate is fully administered and the court has discharged the trustee."[11] Fed. R. Bankr. P. 3022 states that, after an estate is fully administered in a Chapter 11 reorganization case, the court, sua sponte or on a motion from a party, "shall enter a final decree closing the case."[12]

Expounding on this rule, several jurisdictions have enacted local bankruptcy rules that explain when a Chapter 11 plan has been "fully administered" and when a case should be closed.[13] However, when discussing Chapter 11 debtors, these rules fail to distinguish between a regular Chapter 11 individual debtor (who receives a discharge only after all plan payments have been made) and a subchapter V individual debtor (who receives a discharge upon plan confirmation if the plan is consensual).

As a result, it appears that even a subchapter V individual debtor who received a discharge must file semi-annual reports and wait until three to five years after plan confirmation to have a case closed. Presumably, given Congress' purpose in enacting the SBRA, this enforced delay in closing an individual SBRA Chapter 11 with a consensual confirmed plan is an unintended consequence.

LOCAL BANKRUPTCY RULES

In Maryland, Local Bankruptcy Rule 3022-1 provides that a Chapter 11 plan will be "fully administered" under Federal Bankruptcy Rule 3022:

(1) after the completion of the following:

(A) six (6) months have elapsed after the entry of a final order of confirmation that has become nonappealable;

(B) the deposits required by the plan have been distributed;

(C) the property proposed by the plan to be transferred has been transferred;

(D) the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the

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[11] 11 U.S.C. Section 350(a). See also In re Swiss Chalet, Inc., 485 B.R. 47 (Bankr. D.P.R. 2012) (Section 350(a) of the Bankruptcy Code directs the court to close a case "[a]fter an estate is fully administered, and the Court has discharged the trustee."

[12] Fed. R. Bankr. P. 3022. See also In re Perez, 2020 LEXIS 1146 (Bankr. D.P.R., April 28, 2020) (Chapter 11 case is not officially over until bankruptcy court closes it by entering final decree).

[13] See, e.g. Md. Local Bankr. R. 3022-1; N.D. Fla. Local Bankr. Rule 3022-1; Neb. Local Bankr. Rule 3022-1; S.D. Ill. Local Bankr. Rule 3022.

plan;

(E) payments under the plan have commenced; and

(F) all motions, contested matters, and adversary proceedings have been finally resolved; or

(2) for individual Chapter 11 debtors, upon the completion of all plan payments; or

(3) at another time specifically defined by the plan.[14]

In an apparent contradiction to the efficiency goal of the SBRA, the above-referenced local rule requires that individual Chapter 11 debtors complete all plan payments before a plan is "fully administered."[15] The requirements apply to an individual, even if the confirmed plan is consensual and even if the plan has been substantially consummated.[16]

Although seemingly counterproductive, other jurisdictions have similar local rules.[17] For example, Delaware Local Bankruptcy Rule 3022-1 states, in pertinent part, "(d) [i]n a case in which the debtor is an individual, upon completion of all plan payments, debtor and debtor's counsel shall file with the Court a motion for entry of a discharge and a Certification . . . in order to comply with 11 U.S.C. § 1141 and obtain a discharge."[18] Clearly, that local rule does not take into account an individual SBRA debtor who confirms a consensual plan and receives a discharge upon confirmation.

District of Colorado Local Bankruptcy Rule 3022-1 provides that "[i]mmediately after the estate is fully administered, the debtor-in-possession must file a final report and motion for final decree. . . ."[19] Similar to Maryland, the rule incorporates the term "fully administered."

However, unlike the Maryland rule, the Colorado rule does not define what constitutes "fully administered."

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[14] Md. Local Bankr. R. 3022-1.

[15] Id.

[16] Id.

[17] See S.D. Ala. Local Bankr. R. 3022-1 (requiring "certification that all plan payments have been made"); N.D. Fla. Local Bankr. R. 3022-1 (case closing "[a]fter the last plan payment has been made in an individual case); M.D. Ga. Local Bankr. R. 3022-1 (closing "upon completion of all payments under the confirmed plan"); Neb. Local Bankr. R. 3022-1 (closing "[u]pon completion of all plan payments required of an individual debtor under a confirmed Chapter 11 plan").

[18] Del. Bankr. L.R. 3022-1.

[19] D. Colo. L.B.R. 3022-1.

In a 2017 case, *In re Atna Res., Inc.*, the Colorado bankruptcy court discussed how to determine whether a Chapter 11 individual case should be deemed "fully administered."[20] The court specifically cited a case where an Indiana bankruptcy court allowed an individual debtor to close his case prior to completion of all payments explaining that "post confirmation, a debtor still needs to complete plan payments and will not receive a discharge until all plan payments are made."[21] Thus, in both scenarios, the courts considered (1) that "fully administered" requires a case-by-case analysis, and (2) that, in an individual Chapter 11 bankruptcy case, completion of all payments is not a prerequisite to closure (even in a case that was not filed under the SBRA).

In a recent SBRA case, the bankruptcy court considered the debtor's request to close the case given "that the Plan is effective and that the estate has been fully administered."[22] The court ordered the debtor, the subchapter V trustee, the U.S. Trustee, and any other party in interest to further clarify whether a final decree should have been entered.[23] The debtor then clarified that the request was to administratively close the case and would benefit the estate by saving the debtor from having to incur additional expenses for post-confirmation professional services.[24]

The U.S. Trustee opposed the entry of an order closing the case arguing that entry of an order closing the case would be premature because the subchapter V trustee had not been discharged from her duties.[25] Further, the subchapter V trustee would not be discharged until after the debtor completed all plan payments.[26] The bankruptcy court agreed with the U.S. Trustee and denied the motion to close the case.[27] However, it should be noted that this was a corporate subchapter V case in which the subchapter V trustee was active and would be disbursing payments until all plan payments had been made. That is

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[20] 576 B.R. 214 (Bankr. D. Colo. 2017).

[21] Id. (citing In re Johnson, 402 B.R. 851 (Bankr. N.D. Ind. 2009).

[22] In re Gui-Mer-Fe, Inc., 2022 LEXIS 1144 *1 (Bankr. D.P.R. Apr. 25, 2022).

[23] Id. at *3-4.

[24] Id. at *2, 6-7.

[25] Id. at *2-3, 7-8.

[26] Id.

[27] Id. at *23. But see In re Shotkoski, 420 B.R. 479, 483 (8th Cir. BAP 2009), whether estate is "fully administered" is decision that falls within discretion of bankruptcy judge. The Eighth Circuit Bankruptcy Appellate Panel pointed out it was not holding that every individual Chapter 11 case must remain open until such time as all long-term plan payments have been completed and a discharge is entered.

very different from an individual SBRA individual debtor who has already received a discharge.

Only one jurisdiction seems to have specifically addressed an individual subchapter V debtor in its local rules. The U.S. Bankruptcy Court for the District of Massachusetts, through Standing Order 2020-6, established interim amendments to its local rules to conform to the interim amendments to the federal rules of bankruptcy procedure related to subchapter V of Chapter 11. Rule 3022-1 was amended for subchapter v cases.[28]

Specifically, "for purposes of this Rule, 11 U.S.C. § 350 and Fed. R. Bankr. P. 3022, a Chapter 11 case is 'fully administered' unless, sixty (60) days following the entry of a final order confirming a plan of reorganization, (a) a matter is pending or (b) a trustee appointed under 11 U.S.C. § 1104(a) or 11 U.S.C. § 1183, continues to serve."[29]

Similarly, Southern District of West Virginia Local Bankruptcy Rule 3022-1 states that "[a] motion for final decree or to close a case, must be served on the United States Trustee," and such motion must "address whether the estate has been fully administered," including whether, "(9) [t]he debtor is an individual, and the case is to be closed prior to discharge, subject to reopening for the entry of a discharge upon the completion of plan payments."[30] While the language of the rule is similar to Maryland because it expressly defines what constitutes "fully administered," it differs from the Maryland rule (and several other states) because it contemplates the case being closed before all plan payments are completed. This rule is more consistent with the SBRA's efficiency goal. It appears that, in West Virginia at least, an individual SBRA debtor who confirmed a consensual plan and received a discharge, can close the case without having to file semi-annual progress reports for the next three to five years.

CONCLUSION

While the purpose of the SBRA is to promote an efficient reorganization for small businesses and individuals, it appears that many local rules have not made a distinction between closing Chapter 11 individual cases and subchapter V individual case. As a result, individuals filing subchapter V are being compelled to leave a case open for three to five years and to file semi-annual reports even though they may have received a discharge and have fully administered their

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[28] Mass. Local Bankr. R. 3022-1(a).

[29] Id.

[30] S.D.W.V. L.B.R. 3022-1.

case. Hopefully, some attention will be paid to this oversight and local rules will be modified to accommodate individuals who have confirmed consensual plans under subchapter V.