NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. EP 18-015

Bankruptcy Case No. 10-21355-PGC

NORMAND A. BINETTE, JR., and
MARY J. BINETTE,
Debtors.

NORMAND A. BINETTE, JR., and
MARY J. BINETTE,
Appellants,

v.

BANGOR SAVINGS BANK,
Appellee.

Appeal from the United States Bankruptcy Court
for the District of Maine
(Hon. Peter G. Cary, U.S. Bankruptcy Judge)

Before
Godoy, Harwood, and Katz,
United States Bankruptcy Appellate Panel Judges.

J. Scott Logan, Esq., on brief for Appellants.
Bruce B. Hochman, Esq., and Micah A. Smart, Esq., on brief for Appellee.

March 26, 2019

Godoy, U.S. Bankruptcy Appellate Panel Judge.

Four years after their chapter 13 case closed, Normand A. Binette, Jr. and Mary J. Binette (the "Debtors") moved to reopen it under § 350(b),[1] seeking to commence an adversary proceeding against Bangor Savings Bank ("BSB") for an alleged violation of the discharge injunction. The asserted violation stemmed from BSB's refusal to partially release its judicial lien against a non-debtor's interest in certain real estate. The Debtors maintain that the lien was stripped off seven years earlier through the order confirming their plan. Following the bankruptcy court's refusal to reopen their case, the Debtors appealed. Discerning no abuse of discretion, we **AFFIRM**.

BACKGROUND

I. Pre-petition Events

Normand A. Binette, Jr. ("Mr. Binette") formerly owned MB Enterprise, LLC ("MBE"), an asphalt contracting business operating at 20 Enterprise Drive in Arundel, Maine (the "Arundel Property"). In 2007, MBE purchased a truck from Whited Ford Truck Center ("Whited Ford") for approximately $90,000.00. In connection with that purchase, MBE and Whited executed a Commercial Installment Sale Contract and Security Agreement (the "Agreement"), and Mr. Binette personally guaranteed MBE's obligations under the Agreement. Simultaneously with the execution of the Agreement, Whited Ford transferred its security interest in the truck to BSB.

After MBE defaulted on its payment obligation under the Agreement, BSB commenced a lawsuit in state court and obtained a judgment (the "State Court Judgment") and a writ of execution (the "Writ") against MBE and Mr. Binette. Thereafter, BSB recorded the State Court

[1] All references to "Bankruptcy Code" or to specific statutory sections are to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. §§ 101, et seq. All references to "Rule" are to the Federal Rules of Civil Procedure, and all references to "Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure.

Judgment and the Writ in the York County Registry of Deeds which—BSB asserts and the Debtors do not dispute—created a judicial lien against the Arundel Property. According to the Debtors, MBE subsequently ceased to operate and transferred all of its assets and liabilities to Mr. Binette.[2]

II. The Bankruptcy Proceedings

A. The Bankruptcy Filing

The Debtors filed a chapter 13 petition in August 2010, two weeks after the state court issued the Writ. On their Schedule A–Real Property, the Debtors listed, inter alia, the Arundel Property, indicating it was worth $170,000.00 and subject to a first mortgage in the approximate amount of $180,000.00. On their Schedule D–Creditors Holding Secured Claims, the Debtors did not list BSB as a secured creditor with respect to the Arundel Property. They did, however, list BSB as the holder of a $65,000.00 claim on their Schedule F–Creditors Holding Unsecured Nonpriority Claims.

In October 2010, BSB filed a proof of claim, asserting an unsecured claim in the amount of $67,553.14 ("Claim 8") for "money loaned." BSB attached to Claim 8 copies of the Agreement, the State Court Judgment, and the Writ.

B. The Chapter 13 Plan

The following month, the Debtors filed a First Amended Chapter 13 Plan (the "Plan"). In the Plan provision entitled "Class One General Unsecured Claims," the Debtors listed BSB as an unsecured creditor whose "$65,000 deficiency" claim would "be repaid at a different rate from

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[2] The record contains no evidence of or legal support for this transfer. Despite representing that the Arundel Property was transferred to Mr. Binette pre-petition, the Debtors described the Arundel Property as "purchased in 2004" and further described their interest as an "equitable interest."

other general unsecured creditors[.]" Specifically, the Debtors proposed to pay BSB $26,000.00 over the life of the Plan. In the "Special Provisions" section of the Plan—which is at the heart of this appeal—the Debtors addressed the purported "strip-down" of BSB's "judicial liens," stating:

> **Strip-Down of Bangor Savings Bank's Judicial Liens**
> It appearing that Debtor's business has been valued at no more than $170,000.00 and Debtor's primary mortgage to Camden National Bank bears a balance of at least $180,670.00 according to Debtor's records, and that Debtor's residence is valued at no more than $220,000.00 and Debtor's primary mortgage to AHMSI bears a balance of at least $226,000.00 and second mortgage to Saco Valley Credit Union bears a balance of at least $65,000, Debtor's judicial [sic] to Bangor Savings Bank in the approximate amount of $65,000.00 shall be stripped. The claim for the judicial liens shall be treated as a class I general unsecured creditor and the claim shall be paid as set forth above.

Nothing in this provision specifically identified the property that was subject to judicial lien(s) or the so-called "strip-down."

After a hearing, the bankruptcy court entered an order confirming the Plan (the "Confirmation Order"), without objection. The Confirmation Order provided that: (1) the "$26,000.00 allocated to Class I General Unsecured Claims [would] be reallocated to General Unsecured Claims";[3] (2) the "total to be repaid to General Unsecured Claims [was] $28,729.94"; (3) confirmation was "subject to [ ] [r]esolution of actions to determine the avoidability, priority, or extent of liens . . . [and] resolution of actions to determine the allowed amount of secured claims under [§] 506"; and (4) terms of the Plan not expressly modified by the Confirmation Order were incorporated by reference. In addition, the Confirmation Order established deadlines for filing motions to avoid liens as follows:

> As soon as practicable after the claims bar date, but no later than 90 days thereafter, the debtor or the Trustee shall file a motion to allow or disallow claims and, if warranted, to avoid judicial liens. Upon entry of an order on that motion, the plan shall be deemed amended to conform to the order. . . .
> . . . .

[3] BSB was the only creditor listed as holding a Class I General Unsecured Claim.

> Except as otherwise addressed in the motion to allow and disallow claims, all objections to claims, all actions to determine the avoidability, priority or extent of liens . . . shall be filed no later than 30 days after the motion to allow and disallow claims.

Thereafter, the Debtors filed a "Motion to Allow & Disallow Claims and to Modify Plan and Objections to Claims" (the "MAD"), asking the bankruptcy court to allow creditors' claims as provided in an accompanying proposed order. Both the MAD and proposed order were silent regarding the treatment of BSB's judicial lien on the Arundel Property. In the absence of any objections, the bankruptcy court entered an order granting the MAD (the "Order Allowing Claims") as proposed by the Debtors. The Debtors did not file a separate motion seeking to strip or avoid BSB's judicial lien.

C. Entry of Discharge and Closing of Case

BSB eventually received a dividend of $9,392.52 on account of Claim 8. The Debtors received their chapter 13 discharges in November 2013 and, in April 2014, the bankruptcy court entered the final decree and closed the case.

D. The Motion to Reopen and BSB's Objection

Nearly four years later, in March 2018, the Debtors filed a motion to reopen their case ("Motion to Reopen") under § 350(b) in order to commence an adversary proceeding against BSB for an alleged violation of the discharge injunction. As grounds, the Debtors asserted that, in January 2018, in connection with a contemplated sale of the Arundel Property, they learned that BSB had not released its lien on the Arundel Property despite the Plan's lien-stripping provision. Adding that MBE had transferred all of its assets and liabilities (including the Arundel Property) to Mr. Binette pre-petition, they complained that BSB "refused to release that

part of its lien issued against the disincorporated entity [MBE],” thereby preventing the sale of the Arundel Property and violating the discharge injunction.

In its objection to the Motion to Reopen, BSB countered that there was “no cause” to reopen the case under § 350 because its refusal to release a lien as to the “disincorporated entity,” MBE—a non-debtor—did not violate the discharge injunction. BSB maintained that it was not required to release its lien against MBE until it received full payment of its claim. According to BSB, neither the Debtors’ discharge nor the unauthorized transfer of the Arundel Property altered MBE’s payment obligation. In an effort to further justify its conduct, BSB explained that it had agreed to release its judicial lien on the Arundel Property in January 2018 if the Debtors could demonstrate that the contemplated sale was an arms-length transaction. BSB refused to release its lien only after it received from Mr. Binette a copy of a one-page purchase and sale agreement which recited a purchase price of nearly one-half the assessed value of the Arundel Property.

E. The Hearing on the Motion to Reopen

During the April 25, 2018 hearing on the Motion to Reopen, the Debtors insisted that BSB no longer had a lien against the Arundel Property because: (1) BSB had filed an unsecured proof of claim; (2) MBE no longer owned the Arundel Property; and (3) the Plan stripped off that lien. The Debtors conceded, however, that Mr. Binette’s bankruptcy discharge did not affect the liability of third parties to BSB, MBE was not a debtor, and BSB could still pursue MBE on its claim, notwithstanding MBE’s “disincorporation.”

BSB reiterated that it could not have violated the discharge injunction by refusing to release its lien against property of a non-debtor. BSB continued to challenge the Debtors’ lien-stripping argument, maintaining that while the Plan included “some” lien-stripping

language, it failed to identify the Arundel Property as the affected property. BSB further argued there was no lien-stripping language in either the Confirmation Order or the Order Allowing Claims. Additionally, BSB emphasized that the Confirmation Order explicitly provided that confirmation was subject to the "resolution of actions to determine the avoidability, priority or extent of liens," and directed the Debtors to "file a motion to allow or disallow claims, and if warranted to avoid judicial liens." Thus, BSB claimed, as a result of the Debtors' failure to include lien-stripping or lien avoidance language in their MAD, or to file a separate motion to avoid its judicial lien, that lien passed through the Debtors' bankruptcy.

The bankruptcy court denied the Motion to Reopen from the bench, reasoning that BSB's lien on the Arundel Property "passed through the bankruptcy," regardless of the alleged disincorporation of MBE, and reopening the case "would serve no purpose." Thereafter, an order denying the Motion to Reopen entered and this appeal followed.

On appeal, the Debtors essentially reiterate the positions they presented below, except they now add that BSB's refusal to release its lien as to MBE violated the discharge injunction by improperly "coercing" Mr. Binette to pay BSB in a manner forbidden by the First Circuit in Pratt v. General Motors Acceptance Corp. (In re Pratt), 462 F.3d 14 (1st Cir. 2006). BSB counters that the Debtors waived their coercion argument by failing to raise it in a timely manner.

APPELLATE JURISDICTION

"Pursuant to 28 U.S.C. §§ 158(a) and (b), the Panel may hear appeals from 'final judgments, orders, and decrees[.]'" Fleet Data Processing Corp. v. Branch (In re Bank of New Eng. Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998); see also Bullard v. Blue Hills Bank,

135 S. Ct. 1686, 1692, 1695 (2015) (discussing the Panel's jurisdiction to hear bankruptcy appeals under 28 U.S.C. § 158(a)). Generally, an order denying a debtor's motion to reopen his bankruptcy case is a final order. Ludvigsen v. Osborne (In re Ludvigsen), BAP No. MB 14-039, 2015 WL 3733193, at *3 (B.A.P. 1st Cir. Jan. 16, 2015) (citations omitted). Therefore, the Panel has jurisdiction to hear this appeal.

STANDARD OF REVIEW

A decision to grant or deny a motion to reopen shall not be overturned unless the court abused its discretion. Id. (citations omitted). An abuse of discretion occurs when a court "relies upon an improper factor, neglects a factor entitled to substantial weight, or considers the correct mix of factors but makes a clear error of judgment in weighing them." Bacardí Int'l Ltd. v. V. Suárez & Co., 719 F.3d 1, 9 (1st Cir. 2013) (citation omitted) (internal quotations omitted).

DISCUSSION

I. The Standard Governing Motions to Reopen

Section 350(b) governs the reopening of bankruptcy cases. See 11 U.S.C. § 350(b). That section provides: "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." Id. Bankruptcy Rule 5010 provides, in relevant part: "A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code." Fed. R. Bankr. P. 5010. "The decision to reopen should be made on a case-by-case basis based on the particular circumstances and equities of a case, and should be left to the sole discretion of [the] bankruptcy court." In re Dalezios, 507 B.R. 54, 58 (Bankr. D. Mass. 2014) (citation omitted) (internal quotations omitted); see also Pingaro v. Ameriquest Mortg. Co. (In re Pingaro), BAP No. MB 08-025, 2008 WL 8664764,

at *2 (B.A.P. 1st Cir. Aug. 14, 2008) (stating "the decision to reopen a case is within the sound discretion of the bankruptcy court") (quoting Mass. Dep't of Revenue v. Crocker (In re Crocker), 362 B.R. 49, 53 (B.A.P. 1st Cir. 2007)).

Motions to reopen "involve a weighing of competing policy considerations: the bankruptcy policy of providing a deserving debtor with a fresh start; and the bankruptcy policy of providing, in an expedient manner, finality to those disputes which arise between debtors and creditors." In re Gagne, No. 02-10966, 2010 WL 5209243, at *1 (Bankr. D. Me. Dec. 16, 2010) (citation omitted) (internal quotations omitted). The moving party bears the burden of demonstrating grounds for reopening the case. Colonial Sur. Co. v. Weizman, 564 F.3d 526, 532 (1st Cir. 2009). Courts consider a variety of factors when deciding whether to reopen a case, including:

> the length of time that the case was closed [ ]; whether a non[-]bankruptcy forum, such as state court, has the ability to determine the issue sought to be posed by the debtor [ ]; whether prior litigation in bankruptcy court implicitly determined that the state court would be the appropriate forum to determine the rights, post[-]bankruptcy, of the parties; whether any parties would be prejudiced were the case reopened or not reopened; the extent of the benefit which the debtor seeks to achieve by reopening; and whether it is clear at the outset that the debtor would not be entitled to any relief after the case were reopened.

In re Crocker, 362 B.R. at 53 (citing In re Otto, 311 B.R. 43, 47 (Bankr. E.D. Pa. 2004)); see also In re Dalezios, 507 B.R. at 59 (considering the Crocker factors).

"Courts should not reopen a case if doing so would be futile." Diaz Rodriguez v. Olympic Mortg. Corp. (In re Diaz Rodriguez), 357 B.R. 691, 699 (Bankr. D.P.R. 2006) (citation omitted); see also In re Ludvigsen, 2015 WL 3733193, at *4 (stating the bankruptcy court should deny a motion to reopen if reopening the case "would serve no purpose"); In re Gagne, 2010 WL 5209243, at *1 (same). Courts within this circuit equate "futility" in this context with an

inability to ultimately prevail in the contemplated action or on the proffered claim. See In re Ludvigsen, 2015 WL 3733193, at *4; In re Lugo Velez, No. 13-06518, 2016 WL 5947227, at *1 (Bankr. D.P.R. Oct. 13, 2016); In re Gagne, 2010 WL 5209243, at *1; In re Weber, 283 B.R. 630, 633 (Bankr. D. Mass. 2002). "A case should not be reopened if the ultimate relief the movant seeks is inappropriate[.]" In re Siegal, 535 B.R. 5, 10 (Bankr. D. Mass. 2015) (citations omitted).

II. The Discharge Injunction and its Limitations

Section 524(a)(2) provides that a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor . . . ." 11 U.S.C. § 524(a)(2); see also Ramirez Rosado v. Banco Popular de P.R. (In re Ramirez Rosado), 561 B.R. 598, 605 (B.A.P. 1st Cir. 2017) (stating § 524 "establishes the discharge injunction") (citations omitted). "The injunction affords honest but unfortunate debtors with a 'fresh start' from the burdens of personal liability for unsecured pre[-]petition debts and thus advances the overarching purpose of the Bankruptcy Code." Canning v. Beneficial Me., Inc. (In re Canning), 706 F.3d 64, 69 (1st Cir. 2013) (citing Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367 (2007); In re Pratt, 462 F.3d at 17-18). "[T]he scope of the injunction is broad, and bankruptcy courts may enforce it through [ ] § 105 . . . ." Id. (citing In re Pratt, 462 F.3d at 17, 21).

"The burden of proof is on the former debtor to establish by clear and convincing evidence that [the] creditor violated the post-discharge injunction." In re Ramirez Rosado, 561 B.R. at 605 (citation omitted) (internal quotations omitted). To prevail on a § 524(a)(2) claim,

a debtor must demonstrate that the creditor: (1) had notice of the debtor's discharge; (2) intended the actions which constituted the violation; and (3) acted in a way that improperly coerced or harassed the debtor. Id. (citation omitted) (internal quotations omitted). In this circuit, courts "assess whether conduct is improperly coercive or harassing under an objective standard—the debtor's subjective feeling of coercion or harassment is not enough." Id. (citations omitted) (internal quotations omitted). "While there is no specific test to determine whether a creditor's conduct meets this objective standard, the circuit considers the facts and circumstances of each case . . . ." Id. (citation omitted) (internal quotations omitted). "An action is coercive when it is tantamount to a threat, or places the debtor between a rock and a hard place in which he would lose either way." Id. (quoting Diamond v. Premier Capital, Inc. (In re Diamond), 346 F.3d 224, 227 (1st Cir. 2003)) (internal quotations omitted).

The discharge injunction has certain limitations. The injunction does not prohibit, for example, "every communication between a creditor and debtor—only those designed to collect, recover or offset any [discharged] debt as a personal liability of the debtor." In re Ramirez Rosado, 561 B.R. at 605-06 (citation omitted) (internal quotations omitted). In addition, "the discharge injunction does not enjoin a secured creditor from recovering on valid pre[-]petition liens, which, unless modified or avoided, ride through bankruptcy unaffected and are enforceable in accordance with state law." In re Canning, 706 F.3d at 69 (citation omitted). "[A] secured creditor may take any appropriate action to enforce a valid lien surviving the discharge, as long as the creditor does not pursue in personam relief against the debtor." Best v. Nationstar Mortg. LLC (In re Best), 540 B.R. 1, 9 (B.A.P. 1st Cir. 2015) (citation omitted) (internal quotations omitted).

III. The Standards Applied

A. The Discharge Injunction does not Enjoin Actions against Non-Debtor Third Parties

While enforcement of the discharge injunction is a valid basis for reopening a bankruptcy case,[4] the court "must determine whether the debt at issue has in fact been discharged" before it can grant a motion to reopen. In re Banks, 2011 WL 1898701, at *2. "[W]hen there is no discharge of the debt owed, there can be no violation of § 524." Clavito v. U.S. Dep't of Veterans Affairs, No. 18cv443-MMA (NLS), 2018 WL 3545676, at *5 (S.D. Cal. July 24, 2018) (citation omitted) (internal quotations omitted).

Here, the so-called "disincorporated entity"—MBE—was not a debtor in the bankruptcy case and, therefore, did not receive a discharge. "Section 524(e) . . . makes clear that the bankruptcy discharge of a debtor, by itself, does not operate to relieve non-debtors of their liabilities." Gillman v. Cont'l Airlines (In re Cont'l Airlines), 203 F.3d 203, 211 (3d Cir. 2000) (citation omitted); see also In re Rolanti, No. 12-14189-FJB, 2015 WL 1576275, at *1 n.1 (Bankr. D. Mass. Apr. 2, 2015) (stating non-debtors cannot allege violations of the discharge injunction because they are not "beneficiaries of [the debtor's] discharge"); Whitman-Nieves v. P.R. Fed. Credit Union (In re Whitman-Nieves), 519 B.R. 1, 12 (Bankr. D.P.R. 2014) (stating the discharge of a debtor "does not eradicate liability of third parties") (citation omitted) (internal quotations omitted). In fact, the discharge injunction has no impact upon the liability of MBE, as a non-debtor third party, or upon the ability of BSB to proceed against MBE. See Brooks v. Gen. Motors Acceptance Corp. (In re Brooks), 340 B.R. 648, 654 (Bankr. D. Me. 2006)

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[4] In re Covelli, 550 B.R. 256, 263 (Bankr. S.D.N.Y. 2016); In re Banks, No. 03-12904-WHD, 2011 WL 1898701, at *1 (Bankr. N.D. Ga. Mar. 11, 2011).

(recognizing that creditor's personal and in rem claims against non-filing co-debtor are not affected by chapter 13, except by the co-debtor stay); In re Schultz, 251 B.R. 823, 827 (Bankr. E.D. Tex. 2000) (stating the discharge injunction has "no impact upon the liability of third parties").

In arguing that BSB should have released its lien against MBE's interest in the Arundel Property, the Debtors misapprehend the intended beneficiary of the discharge. Indeed, at the hearing on the Motion to Reopen, the Debtors conceded that their discharge did not affect the liability of third parties to BSB, and that BSB could still pursue MBE on its claim.

B. The Discharge Injunction does not Enjoin Recovery on Valid Pre-petition Liens

On appeal, the Debtors shift their focus away from MBE's rights as a disincorporated entity to the rights of Mr. Binette, and now claim that BSB's refusal to release its lien "had the effect of impermissibly coercing him to pay it for its lien release in order to sell the real estate," all in violation of In re Pratt, supra. In the proceedings below, however, the Debtors never referred to In re Pratt and never argued that BSB's refusal to release the subject lien was coercive as to Mr. Binette in violation of the First Circuit's dictates set forth in that case. The first mention of the coercion argument appears in the Debtors' appellate brief. Therefore, the argument is waived for appeal purposes. See Privitera v. Curran (In re Curran), 855 F.3d 19, 27 n.4 (1st Cir. 2017) (stating arguments advanced for the first time on appeal are deemed waived) (citation omitted).[5]

[5] Even if the Debtors had preserved their coercion argument for appeal purposes, the argument would still fail on its merits, as this case is factually distinguishable from Pratt, where the creditor's refusal to release its lien effectively eliminated the debtors' surrender option. See 462 F.3d at 19-20. Here, there was no surrender issue. Thus, Pratt is inapposite.

C. The Discharge Injunction does not Impact Valid, Unmodified Pre-petition Liens

It is well established that the "discharge injunction does not enjoin a secured creditor from recovering on valid pre[-]petition liens, which, unless modified or avoided, ride through bankruptcy unaffected and are enforceable in accordance with state law." In re Canning, 706 F.3d at 69 (citing In re Pratt, 462 F.3d at 17); see also Arruda v. Sears, Roebuck & Co., 310 F.3d 13, 21 (1st Cir. 2002) ("It is hornbook law that a valid lien survives a discharge in bankruptcy unless [(1)] it is avoidable and [(2)] the debtor takes the proper steps to avoid it.") (citation omitted). Here, the Debtors have never challenged the underlying validity of *any* portion of the subject lien, let alone that portion of the lien against MBE's interest.[6] It follows, then, that the lien survives the Debtors' discharge unless: (1) the lien was avoidable; and (2) the Debtors took proper steps to avoid it. As stated, supra, BSB's lien against MBE's interest in the Arundel Property was not avoidable and remained intact after the Debtors' bankruptcy because, as a non-debtor, MBE was not the recipient of a discharge. Therefore, with respect to that portion of the lien against *MBE's* interest in the Arundel Property, we need not advance to the question of whether the Debtors took proper steps to avoid it and the sufficiency of the Plan's lien-stripping provision.

[6] Although the Debtors assert in their appellate brief that the Writ was unrecorded, this claim is not borne out by the record. Moreover, at the hearing on the Motion to Reopen, the Debtors acknowledged that BSB recorded the Writ pre-petition.

CONCLUSION

Based on the foregoing, the Debtors have failed to satisfy their burden of demonstrating that reopening their bankruptcy case would not be futile.[7] Accordingly, we **AFFIRM**.

[7] Because the law easily supports the bankruptcy court's conclusion that the lien rode through bankruptcy, we need not opine whether the Debtors' considerable delay in filing the Motion to Reopen bars the relief they seek. Other courts, however, have ruled that laches may preclude the granting of a motion to reopen. See, e.g., In re Gagne, 2010 WL 5209243, at *1; In re Dator, No. 98-15046-JNF, 2006 WL 2056678, at *2 (Bankr. D. Mass. July 21, 2006); see also Wilding v. CitiFinancial Consumer Fin. Servs., Inc. (In re Wilding), 475 F.3d 428, 433 (1st Cir. 2007) (stating that when deciding whether to reopen a case, bankruptcy court may consider a number of defenses, including laches).