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The court incorporates by reference in this paragraph and adopts as the findings and analysis of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.

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CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No. 06-30995
	)	
Joyce Reinbolt	)	Chapter 7
	)	
Debtor.	)	
	)	JUDGE MARY ANN WHIPPLE

MEMORANDUM OF DECISION RE DEBTOR'S MOTION TO REOPEN

This case was closed without discharge on December 13, 2006, because Debtor did not complete a post-petition instructional course on personal financial management and file a statement confirming completion of such a course within 45 days after the first date set for the meeting of creditors. *See* 11 U.S.C. § 727(a)(11); Revised Interim Bankruptcy Rule 1007(b)(7) and (c); Interim Bankruptcy Rule 4004. On June 26, 2007, Debtor filed a motion to reopen the case and for an extension of time to complete the required course and file the required statement of completion so that she could obtain a Chapter 7 discharge. Two creditors who pursued collection activity after the case was closed without a discharge, Gale Burk and David Ulrich, have objected to reopening of the case and to any extension of time for completion of the requirements relating to the post-petition instructional course on personal financial management for purposes of entry of a discharge.

The court has jurisdiction over Debtor's Chapter 7 case under 28 U.S.C. §1334 and the general order of reference entered in this district. *See* 28 U.S.C. § 157(a). Proceedings with respect to discharge, dischargeability of particular debts and adjustment of the debtor-creditor relationship are core proceedings that the court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(I), (J) and (O).

The court has considered the documents and affidavits submitted by the parties, as well as the docket and filings in this case. For the reasons stated below, the court will grant the motion. In doing so, however, any collection activity that occurred while the case was closed without discharge need not and will not be undone.

FACTUAL AND PROCEDURAL BACKGROUND

Debtor Joyce Reinbolt ("Debtor") filed her voluntary petition commencing this case on May 4, 2006. The case was originally commenced under Chapter 13, with Debtor seeking to confirm and perform a plan to repay her debts. It was commenced as a bare bones case, meaning that no plan, no schedules and few of the documents necessary to proceed with the case were filed at that time. As required to commence even a bare bones case, Debtor did file and upload into the court's electronic filing system a matrix listing creditors and their addresses for purposes of notice of commencement of the case.

Jasper N. Burt ("Burt"), the attorney for creditor Donald Ulrich, whose claims were acquired upon his death by his son David Ulrich, was initially listed as a creditor and uploaded into the court's electronic filing system by Debtor. The Clerk duly and properly served Burt on May 10, 2006, with the standard notice of the commencement of the case and various important deadlines and hearing dates. [Doc. # 5,7].

Gale Burk ("Burk"), who is a former spouse of Debtor's, was not listed as a creditor at the commencement of the case and was not uploaded by Plaintiff into the court's electronic filing system. Burk was therefore not served by the Clerk with the notice of commencement of the case. [*See id.*]. Reinbolt filed her schedules, related documents and proposed Chapter 13 plan on May 19, 2006. [Doc. #9]. She did not identify Burk on Schedules D through F listing her creditors. She did identify Burk on Schedule H as a co-debtor to Toledo Edison and to Donald Ulrich c/o Burt, listing Burk at an address in Defiance, Ohio. Debtor also attached to her schedules filing another matrix listing creditors. Burk appeared on this matrix. However, Debtor did not separately upload him into the court's electronic filing system and the filing of a creditor matrix amending or changing the original one actually required a separate filing, listing only the added creditors, and the payment of a filing fee. Accordingly, Burk was not added to the service list used by the Clerk. On June 19, 2006, Debtor filed a certificate of service of the proposed Chapter 13 plan. Burk appears on this certificate of service as a recipient by mail of her proposed Chapter 13 plan from Debtor.

Debtor voluntarily converted her case to a Chapter 7 liquidation case on July 21, 2006, before a meeting of creditors or confirmation hearing occurred and before any plan was confirmed. The court entered an order converting the case on July 25, 2006. [Doc. #26]. Notice of the commencement of the Chapter 7 case was served by the Clerk on August 3, 2006. [Doc. #35]. The notice was mailed to Burt. It was not mailed to Burk. The standard form of notice clearly advised creditors and parties in interest of the appointment of a Chapter 7 trustee, of the September 19, 2006, date for the meeting of creditors and of the November 20, 2006, deadlines for filing both complaints objecting to discharge and complaints to determine the dischargeability of particular debts. The notice also directed creditors not to file a proof of claim unless separately instructed to do so. Lastly, the notice advised creditors and parties in interest that the presumption of abuse did not arise in this case.

On August 25, 2007, Burt filed a separate notice of appearance and request for notices on behalf of David Ulrich, who was identified as the successor in interest to the Estate of Donald Ulrich. *See* Interim Fed. R. Bankr. P. 2002(g). The address was the same one to which the court had already been sending notices and mailings in the case. That same day, Burt also filed on David Ulrich's behalf a motion for relief from stay and abandonment, [Doc. #38], seeking authority to foreclose on a second mortgage on Debtor's property at 24864 Bowman Road, Defiance, Ohio 43512, which was identified as Debtor's home address in her petition. The motion was served on Burk at an address different than the one to which Debtor had sent her proposed plan. Ulrich's motion was unopposed and granted by order entered on September 26, 2006. [Doc. #39].

After the meeting of creditors, the Chapter 7 trustee filed a no asset report, completing his administration of the estate. The November 20, 2006, deadline under Interim Rule 4004(a) of the Federal Rules of Bankruptcy Procedure for filing complaints objecting to discharge and under Rule 4007(c) of the Federal Rules of Bankruptcy Procedure for filing complaints to determine dischargeability of particular debts expired without any complaint having been filed. Debtor's deadline to file a statement of completion of a post-petition personal financial management course was 45 days after the September 19, 2006, first date set for the meeting of creditors, Revised Interim Fed. R. Bankr. P. 1007(c), or November 3, 2006. Debtor filed nothing, either before the deadline or before the case was closed. After the November 20, 2006, deadline for filing complaints passed, the Clerk closed this case on December 13, 2006, without entry of a discharge. Notice of closure of the case without entry of a discharge for Debtor was mailed by the court on December 15, 2006. [Doc. #50]. The notice was mailed to Burt and to Ulrich c/o Burt, as well as to Debtor and to Debtor's attorney. [*Id.*]. It was not mailed to Burk. [*Id.*].

After the notice of closing of the case without discharge, nothing else was filed in this court until Debtor filed on June 26, 2007, her motion to reopen the case. The motion was served on Burk and on Ulrich at Burt's law office address. Burk filed a timely objection. Ulrich was permitted to file a late objection.

LAW AND ANALYSIS

This case was commenced after the October 17, 2005, effective date of the relevant provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"or "the Act"). Therefore the Bankruptcy Code as amended by BAPCPA applies in this case; unless otherwise specified all statutory references in this opinion are to the Bankruptcy Code as amended by BAPCPA.

This case was closed without discharge because Debtor did not comply with one of the provisions added by the Act. Under 11 U.S.C. § 727(a)(11), any debtor who does not complete a post-petition instructional course on personal financial management is not entitled to a Chapter 7 discharge. The amendments do not address the mechanism by which a debtor proves she has complied with § 727(a)(11) or when that compliance must occur. That was left to the Federal Rules of Bankruptcy Procedure. Under Revised Interim Bankruptcy Rule 1007(b)(7) and (c), *see* Second Amended General Order No. 2005-11 of the United States District Court for the Northern District of Ohio, a debtor is required to file a statement regarding completion of such a course within 45 days of the first date set for the meeting of creditors. "The failure to timely file such a certification does not require dismissal of the case, or alter the trustee's administration of the case or estate, or prevent the Clerk from closing the case. It merely precludes entry of the debtor's discharge." *In re Knight*, 349 B.R. 681, 684 (Bankr. D. Idaho 2006). Under Interim Bankruptcy Rule 4004(c), the court is directed to grant the debtor a discharge unless, among other things, debtor has not filed the required statement of completion. Interim Fed. R. Bankr. P. 4004(c)(1)(H). Debtor in this case did not file such a statement as required by the applicable rules of procedure, so the case was closed without discharge.

Debtor has now filed her motion to reopen the case and paid the required $260.00 filing fee. *See id.*, at 686-87(fee waiver denied). The stated purpose for reopening is to allow Debtor to complete the course, file the statement of completion and obtain a discharge. One of the permissible grounds for reopening a case under 11 U.S.C. § 350(b) is "to accord relief to the debtor." As Debtor seeks to have the case reopened for the ultimate purpose of taking the procedural steps to obtain a Chapter 7 discharge, the purpose of reopening is "to accord relief to the Debtor" as provided by § 350(b). *Id.*, at 685. As reopening is, for the most part, a ministerial act that determines nothing with respect to the merits of a case, *Moyer v. ABN AMRO Mortgage Group, Inc.* (*In re Feringa*), 376 B.R. 614, 622 (Bankr. W.D. Mich. 2007); *In re Abbott*,

183 B.R. 198, 200 (9th Cir. BAP 1995), the court will grant Debtor's motion insofar as it seeks to have the case reopened, *Knight*, 349 B.R. at 685.

Debtor's motion also seeks an extension of the time provided by Revised Interim Bankruptcy Rule 1007(c) for the filing of her statement of completion of a post-petition instructional course on personal financial management. Unless this relief is granted, Debtor will not be entitled to a discharge even on reopening of the case. This is the relief to which both Burk and Ulrich actually object. Since Debtor's request is being made after the expiration of the 45 day time period provided by Revised Interim Bankruptcy Rule 1007(c), Interim Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure governs Debtor's request. Under Rule 9006(b)(1), when the request for an enlargement of time is made after the time period for action has expired, a court is permitted to enlarge the time for filing only on motion where the failure to act timely is shown to be the result of excusable neglect. The burden of proving excusable neglect under Rule 9006(b) is on the party seeking an enlargement of time. *In re Enron Corp.*, 419 F.3d 115, 121 (2nd Cir. 2005); *In re Velker*, 145 B.R. 30, 32 (Bankr. N.D. Ohio 1992).

The standards for a finding of excusable neglect under Rule 9006(b)(1) were established in *Pioneer Investment Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 382 (1993). The Supreme Court emphasized in *Pioneer* that "excusable neglect" is not limited to errors caused by circumstances beyond the late-filing party's control but also may extend to errors caused by "inadvertence, mistake or carelessness." *Pioneer Inv. Servs. Co.*, 507 U.S. at 388. The Supreme Court held that a determination of whether a party's neglect is 'excusable' is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission," including "the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.* at 395.

Ulrich and Burk do not contest that Debtor's failure to take the course and file the certificate resulted from Debtor's carelessness in attention to the deadline imposed by Revised Interim Bankruptcy Rule 1007(c), *i.e.* her "neglect" of the legal obligations attendant to the relief she sought under Chapter 7 of the Bankruptcy Code. *See Pioneer*, 507 U.S. at 394-95 (addressing neglect pursuant to its ordinary dictionary meaning as '"to give little attention or respect" to a matter, or "to leave undone or unattended to esp[ecially] through carelessness."'). Rather, Ulrich and Burt contest that Debtor's neglect of the deadline was excusable.

The first factor identified in *Pioneer* pertinent to whether neglect was excusable is the danger of

prejudice to the other party. The issue of prejudice to Ulrich and Burk in Debtor's failure to take the steps required to obtain a discharge timely is the most critical aspect of the motion before the court, with the issue different as to each of them.

Debtor and Burk borrowed money in 2001 from Donald Ulrich, including to acquire the 24864 Bowman Road property. Donald Ulrich, through Burt as his lawyer, commenced pre-petition litigation against Burk and Debtor with respect to nonpayment of the loans. The litigation was resolved in 2002 by execution of three promissory notes in Donald Ulrich's favor, two by Debtor. Burk and Debtor also gave Donald Ulrich a second mortgage on the Bowman Road property to secure the obligations. The first mortgage was held by CitiFinancial Mortgage Company, Inc. CitiFinancial and Donald Ulrich later commenced pre-petition state court foreclosure actions against Debtor, Burk and the Bowman Road property, which were then stopped by the bankruptcy filing. After conversion to Chapter 7, both CitiFinancial and David Ulrich, as successor to Donald Ulrich, sought [Doc. ## 31, 38] and obtained [Doc. ## 39, 47] relief from the automatic stay to complete the foreclosure of their interests in the real estate, although the stay still remained in effect as to actions against Debtor as to any personal liability for the debts. In his affidavit [Doc. # 63] on behalf of David Ulrich, Burt reports that the foreclosure sale was confirmed on December 12, 2006, but that Ulrich received no money from the sale proceeds. After closure of the Chapter 7 case without discharge, Burt commenced *in personam* collection efforts against Debtor on a pre-petition judgment obtained on one of the promissory notes. Burt states that he had started garnishing Debtor's wages when the motion was filed, asserting that legal fees of $2,000 had been incurred on behalf of Ulrich since the filing of Debtor's bankruptcy petition. Debtor's affidavit [Doc. #64, ¶ 25] states that "[m]y wages are currently being garnished and I am struggling to maintain my financial obligations while this case is pending." The prejudice alleged by Ulrich is the approximately $2,000 in legal fees incurred since Debtor filed for bankruptcy.

As an initial matter, any attorneys' fees incurred by Ulrich during the course of the bankruptcy proceedings and in prosecuting the state court foreclosure proceedings to conclusion prior to the closure of the bankruptcy case without discharge are causally unrelated to prejudice resulting from Debtor's failure to take steps timely so as to obtain her discharge. These fees were incurred due to the bankruptcy in general, not due to Debtor's failure to act timely. They would have been incurred whether or not Debtor obtained a discharge under Chapter 7. There is no provision in any of the promissory notes or otherwise under law that would permit Ulrich to shift fees to Debtor. [*See* Doc. # 63, exhibits]. The fees devoted to pre-case closure services and to post-case closure services are not differentiated by Burt. And while Burt's affidavit

insinuates some misconduct on the part of Burk and Debtor in their dealings with Ulrich, significantly no complaint was filed by Ulrich under 11 U.S.C. § 523(a)(2),(4) or (6) and (c) to except any personal liability of Debtor's from a Chapter 7 discharge by the November 20, 2006, deadline of which he had due and proper notice. Had Debtor taken the steps required by 11 U.S.C. § 727(a)(11) and Revised Interim Bankruptcy Rule 1007(c) to obtain her discharge, any personal liability she had on the promissory notes held by David Ulrich would have been discharged. If she obtains a discharge now, any such remaining personal liability will be discharged.

As Debtor's personal liability on the Ulrich debt is dischargeable, rather than being prejudiced by Debtor's failure to timely act, Ulrich has only fortuitously benefitted from her carelessness. Any wages that he garnished from Debtor due to her own failure to act are a recovery that he would not have been entitled to at all if she had acted timely.

Debtor also will not be entitled upon reopening of the case to seek a recovery from Ulrich of any garnished wages, a further point demonstrating a lack of prejudice to Ulrich. Upon case closure, the balance of the automatic stay expired as to actions against Debtor by operation of the statute under 11 U.S.C. § 362(c)(2)(stay of acts against debtor and debtor's property continue until the earlier of case closure, case dismissal or time a discharge is granted or denied). In the ordinary Chapter 7 case where a debtor obtains a discharge, the stay expires upon entry of discharge as the earliest act. In that routine situation, the temporary injunction of the automatic stay is simply replaced by the permanent injunction of the discharge under 11 U.S.C. § 524(a). In this case, however, when the automatic stay terminated under § 362(c)(2) upon case closure as the earliest act, there was no discharge injunction to step in and permanently preclude *in personam* collection activities on dischargeable debts such as the debt owed by Debtor to Ulrich. Thus, all of the post-closure collection actions and garnishments taken by Ulrich were permissible. Debtor is not entitled on reopening to have any of Ulrich's collections undone. *See In re Gruetzmacher*, 145 B.R. 270, 274 (Bankr. W.D. Wis. 1991)(court denies debtor's motion to set aside and recover garnishment that occurred before individual Chapter 11 case was reopened); *In re Searcy*, 313 B.R. 439, 442-43 (Bankr. W.D. Ark. 2004); *In re Leroy*, Case No. 05-41993, 2007 Bankr. LEXIS 25 (Bankr. D. Kan., Jan. 8, 2007)(foreclosure sale that occurred before vacation of Chapter 13 dismissal order was proper, automatic stay was not retroactively reinstated upon reopening and court declined to vacate sale under 11 U.S.C. § 105 due to debtor's own tardiness in acting).[1]

[1] Similarly, any discharge entered in this case will take effect under § 524(a) when it is entered. Debtor has not requested that discharge be entered *nunc pro tunc* to case closure, nor has she made the showing required for *nunc pro tunc* entry of a

Debtor's wages have been garnished as a result of her inaction, which was an unexpected benefit that Ulrich could not have counted on and which he was not otherwise entitled to pursue. The attorney's fees expended in this effort have likewise also benefitted Ulrich. The court therefore finds that Ulrich has not been and will not be prejudiced by Debtor's failure to timely act, by extending the time to complete a personal financial management course upon reopening and by then entering a discharge. As to Ulrich, the first *Pioneer* factor favors a finding that Debtor's neglect was excusable.

Burk's situation is different. He and Debtor were divorced in 2004, before the commencement of her bankruptcy case. [Doc. #61]. In the divorce decree entered in the Defiance County, Ohio Court of Pleas, Debtor, who was the defendant in the divorce case, was awarded the Bowman Road property. Burk was ordered to quit claim his interest in the property to Debtor. Debtor was ordered

> [T]o assume and pay the following: the outstanding mortgage, taxes and insurance on said property;...It is further Ordered that the Defendant [Debtor] shall assume and pay any judgment that may arise out of the lawsuit filed by Donald E. Ulrich, Plaintiff, Citifinancial Mortgage Co., Inc., Defendant/Third Party Plaintiff and Gale E. Burk, Defendant/3rd Party Defendant, et al., as well as any indebtedness owed to Donald E. Ulrich as it pertains to the Bowman Rd., property.

[*Id.*, p 4. ¶ 5]. In the spot where the ellipsis is in the above quotation, between the language as to payment of the mortgage (which this court assumes is the now-foreclosed Citifinancial mortage), and payment of the Ulrich judgment, the following language appears in the divorce decree as having been manually crossed out, with the cross-out initialed by the parties: "and shall save and indemnify the Plaintiff harmless thereon." Likewise, Debtor was awarded real property at 223 West Barnes in Napoleon, Ohio and ordered to pay all outstanding obligations related to that property; the same language as in paragraph five is crossed out and initialed by the parties. [*Id.*, pp.4-5, ¶ 6]. This property is reported in Debtor's Statement of Affairs as having been sold in January, 2006, with no outstanding debt pertaining thereto scheduled. In his opposition to the instant motion Burk states that he would be prejudiced by allowing Debtor to file her statement of completion so late and obtain a discharge because he "is currently involved in litigation that involves the Debtor and debt that she agreed to assume in their divorce. This Creditor [Burk] is attempting to resolve those issues and has been preparing to proceed on those matters under the assumption that he could pursue

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discharge. While bankruptcy courts have inherent authority to enter *nunc pro tunc* orders, the purpose of such orders is generally to memorialize actions previously taken by a court but not properly of record. *Searcy*, 331 B.R. at 443; *see George v. Sullivan*, 909 F.2d 857, 857, 859, n.1., 861 (6th Cir. 1990). That is not the situation in this case. In any event , invocation of *nunc pro tunc* relief is generally constrained to circumstances variously stated as limited, *In re Aultman Enterprises*, 264 B.R. 485, 492 (E.D. Tenn. 2001), or extraordinary, *MortgageAmerica Corp. v. American Fed. Sav. & Loan (In re MortgageAmerica Corp.)*, 831 F.2d 97,98(5th Cir.1987), with neither term descriptive of this case. Surprisingly the court still sees many Chapter 7 debtors missing the Revised Interim Bankruptcy Rule 1007(c) deadline and having their cases closed without discharge.

the Debtor since she did not receive a discharge." [Doc. # 53]. As the Napoleon property was sold pre-petition, the court assumes that the litigation to which Burk asserts as the source of prejudice is the joint debt involving the Ulrich judgment and foreclosure that is addressed in paragraph five of the divorce decree.

BAPCPA also amended § 523(a)(5) and (15), the provisions of the Bankruptcy Code governing exception from discharge of certain debts arising out of domestic relations proceedings. Before BAPCPA, alimony and support obligations were distinguished from and treated differently than property settlement obligations for purposes of exception from discharge.

Alimony and support obligations were governed by § 523(a)(5). Pre-BAPCPA § 523(a)(5) amounted to a self-executing exception from discharge. While certain aspects of determination and collection of such obligations were still subject to the automatic stay while it was in effect, no bankruptcy court action was required as a condition of non-dischargeability of support obligations under § 523(a)(5). To the extent there was an issue as to whether an obligation was in fact a non-dischargeable support obligation, there was no deadline for seeking a determination and other courts had concurrent jurisdiction with the bankruptcy court to make such a determination, subject again to any strictures temporarily imposed by the automatic stay.

Property settlement and any other obligations arising out of a domestic relations proceeding that were not alimony or support obligations were governed by pre-BAPCPA § 523(a)(15). Property settlement obligations were subject to discharge, but only if certain tests could be met. Procedurally, a creditor seeking to have a marital property settlement obligation excepted from discharge was required by pre-BAPCPA § 523(c) to request a determination of dischargeability under § 523(a)(15) from the bankruptcy court, absent which the debt would be treated as discharged. Under the Federal Rules of Bankruptcy Procedure, such a determination required the filing of a complaint commencing an adversary proceeding in the bankruptcy court, Fed. R. Bankr. P. 4007(a), 7001(6), on or before 60 days after the date first set for the meeting of creditors, Fed. R. Bankr. P. 4007(c). Thus, as a practical matter, where there was a dispute or potential dispute over whether an obligation was non-dischargeable alimony and support or property settlement subject to discharge, the creditor was constrained to filing an adversary complaint in the bankruptcy court before the deadline set by Rule 4004(c).

Under BAPCPA, the substantive and procedural distinctions between marital obligations that are alimony and support and marital obligations that are in the nature of property settlements have been eliminated for purposes of discharge in Chapter 7 cases (but not in Chapter 13 cases). Alimony and support obligations as described in pre-BAPCPA § 523(a)(5) are now simply characterized as "domestic support obligations" as defined in new § 101(14A). Amended § 523(a)(5) now excepts from discharge "domestic

support obligations." In turn Congress amended § 523(a)(15) to include debts to a spouse, former spouse or child of the debtor incurred in a divorce proceeding, and that are not domestic support obligations, as also being excepted from discharge. Section 523(c) was also amended to eliminate debts under § 523(a)(15) as requiring a determination of dischargeability by the bankruptcy court. As a result, under Chapter 7 after BAPCPA, property settlement debts and support debts are excepted from discharge without any action required in the bankruptcy court to determine dischargeability. Although still subject to the temporary injunction of the automatic stay in certain respects, the exception of debts governed by amended provisions § 523(a)(5) and (15) is self-executing as to application of the permanent injunction imposed by the Chapter 7 discharge.

Burk's status as to Debtor must be evaluated under the BAPCPA framework described above that now governs debts incurred in domestic relations proceedings. Specifically, the debt owed by Debtor to Burk is excepted from any discharge she obtains under amended § 523(a)(15).[2] In contrast to the statutory framework in place pre-BAPCPA,[3] Burk was not required to seek any determination of nondischargeability in this court. As with Ulrich, upon statutory termination of the automatic stay with case closure, Burk was free to commence collection proceedings against Debtor with respect to the obligations she incurred in the divorce decree. In fact these appear to be the same obligations upon which Ulrich was pursuing Debtor. But while her direct personal liability to Ulrich was and is dischargeable, the court finds that any debt she owes to Burk as a result of the divorce decree and arising out of the Ulrich litigation is nondischargeable. As described above, any debt she owes to Burk is nondischargeable regardless of whether she obtains a discharge: it is nondischargeable if she obtains a discharge and it is not discharged if she does not. Either way, Burk is not prejudiced by any discharge that will be entered in Debtor's favor. Discharge of the debt would not have been affected by a timely discharge and it will not be affected by an untimely discharge (except to the extent that the discharge of her other dischargeable obligations may facilitate resolution of

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[2] Debtor emphasizes the language manually sticken from paragraph five of the decree, suggesting if not explicitly arguing that the strike out affects dischargeability of any debt to Burk. First, the crossed out language as to holding Burk harmless and indemnifying him structurally pertains only to the CitiFinancial mortgage, taxes and insurance, not to the assumption of the Ulrich debt. Second, even if it did pertain to the debt to Burk related to the Ulrich litigation, the absence of a hold harmless provision does not mean that she does not owe a § 523(a)(15) debt to her former spouse. *Cf. Gibson v. Gibson (In re Gibson)*, 219 B.R. 195, 204-05 (B.A.P. 6th Cir. 1998).

[3] Due to apparent lack of notice to Burk of the commencement of the case and the applicable deadlines, as described above, had he been required to commence a § 523(a)(15) action and did not, the outcome might have been different here, *Cf.* Pre-BAPCPA 523(a)(3)(A); A. Resnick, H. Sommer, eds., *Collier on Bankruptcy*, ¶ 523.09[1], [3][b] (Rel. 61-3/97)(15th ed. Rev), although also he may have had actual notice of the commencement of the case, see *Collier on Bankruptcy*, ¶ 523.09[4], [3][b] (Rel. 61-3/97).

the debt Debtor owes to him). And as addressed above with respect to Ulrich, the automatic stay will not be revived upon reopening and any actions taken before reopening after termination of the stay will not be undone by the court. The court finds that Burk will not be prejudiced by granting Debtor's motion for an extension of time under Rule 9006(b). As to Burk, the first *Pioneer* factor also favors a finding that Debtor's neglect was excusable due to lack of prejudice.

The second *Pioneer* factor is the length of the delay and its impact on the judicial proceedings. The length of Debtor's delay was extended. However, given that the case was closed during this time, the affect on these proceedings was nonexistent. The second *Pioneer* factor also favors a finding of excusable neglect.

The third *Pioneer* factor is the reason for the delay and whether it was within the reasonable control of the moving party. The reason offered by Debtor for overlooking the requirement that she take a post-petition personal financial management course and file a statement of completion is that her difficult personal circumstances, including the obligation to care for her quadriplegic son and the death of her boyfriend and resulting depression, prevented her from focusing on the legal requirements attendant to her bankruptcy case. While these circumstances are unquestionably extremely difficult, the court nevertheless finds that the delay, especially after the Clerk mailed her directly a notice of no discharge, was within Debtor's reasonable control to ameliorate. She has continued working and the ongoing obligations of care for her son were there when she filed the case. Thus the articulated reason for the delay, particularly after the closure of the case, does not favor a finding of excusable neglect.

Finally, nothing in the record indicates that Debtor's failure to act timely in taking a personal financial management course and filing a statement of completion is attributable to Debtor's lack of good faith or a willful failure to follow court rules or orders. To the contrary, in not acting Debtor was only depriving herself of beneficial legal relief. No strategic or tactical motive for delaying in doing so has even been hinted at and the court finds none, with respect to these two or any other creditors.

The determination as to whether neglect is excusable being an equitable one, consideration of all of the *Pioneer* factors shows that, on balance, the equities in this case support a finding of excusable neglect for purposes of Rule 9006(b). Debtor has many unsecured creditors, with over $18,000 in dischargeable obligations (apart from Ulrich and any deficiency that may be owed to CitiFinancial). She is being and will be harmed in her ability to support herself if her dischargeable debts are not discharged. On the other hand, Ulrich has been fortuitously benefitted, not harmed, by Debtor's inaction, while Burk's rights will not be affected whether Debtor gets a discharge or not. The court will also grant Debtor's motion insofar as it seeks an extension of time to file a statement of completion of a post-petition financial management course.

The court will enter a separate order in accordance with this memorandum of decision.