

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 11  
)  
KMART CORPORATION, *et al.*, ) Case No. 02-02474  
)  
Debtors. )

**PLEASE TAKE NOTICE** that on Wednesday, July 24, 2013 at 10:00 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Timothy A. Barnes, United States Bankruptcy Judge for the Northern District of Illinois, or any judge sitting in his Honor's stead, in Courtroom 613 of the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, and then and there we shall present the **Motion to Reopen**, a copy of which is attached and herewith served upon you.

Dated: July 17, 2013

ROSE MONTGOMERY

By: /s/ Ariane Holtschlag  
One of Her Attorneys

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**CERTIFICATE OF SERVICE**

I, Ariane Holtschlag, an attorney, hereby certify that on July 17, 2013, I caused copies of the attached Notice of Motion and accompanying Motion to be served via U.S. Mail or electronic transmission on those persons registered in the Case to receive notice through the ECF system, as indicated on the attached Service List:

/s/ Ariane Holtschlag

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PDT/mo 02-26 #20075

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In re:	)	Case No. 02-B02474
	)	
KMART CORPORATION, et. al.,	)	Chapter 11
	)	
Debtors.	)	

**MOTION TO REOPEN**  
**PURSUANT TO SECTION 350(b) OF THE BANKRUPTCY CODE**

NOW COMES the Movant Rose Montgomery (the "Movant") by her attorneys, PAUL B. EPISCOPE, LLC., and respectfully requests this Court to reopen the bankruptcy case pursuant to Section 350(b) of the Bankruptcy Code. In support of said motion, the Movant states as follows:

**I. PROCEDURAL AND FACTUAL BACKGROUND**

1. Kmart Corporation and certain of its affiliated debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on January 22, 2002 (the "Petition Date").

2. Following the petition date, the Movant suffered a fall within a Kmart store located at 840 Plainfield Road in Willowbrook, Illinois on February 18, 2002 which resulted in the Movant suffering personal injuries and resulting damages.

3. The Movant timely filed a Complaint at Law against Kmart Corporation in the Circuit Court of Cook County on February 13, 2004.

4. Subsequently, Kmart Corporation filed a motion to dismiss the Movant's Complaint at Law based upon its contention that the Movant failed to timely provide an administrative expense claim request form and/or a proof of claim form.

5. After remaining on the "bankruptcy stay" calendar for many years and subsequently attempting to engage in motion practice concerning the issue of Movant's failure to timely file an administrative expense claim form, the Movant's lawsuit was voluntarily dismissed on November 10, 2011 so as to afford the Movant an opportunity to present the necessary motion within the Bankruptcy Court.

6. Therefore, the Movant filed a "motion to file administrative expense claim, instanter" with the Bankruptcy Court and a copy of said motion is attached hereto as Exhibit A.

7. In an effort to avoid duplicative factual statements and arguments, please refer to the aforesaid motion which is attached hereto as Exhibit A for the reasons why the Movant failed to timely file her administrative expense claim form and the reasons for why she should be allowed to do so even at this late juncture. In fact, the aforesaid motion attached hereto as Exhibit A also demonstrates the reasons why this bankruptcy case should be reopened "for cause" pursuant to Section 350(b) of the Bankruptcy Code.

## II. ARGUMENT

8. 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. Section 350(b).

9. The Bankruptcy Code does not define “other cause” as a decision to reopen a case for “other cause” lies within the discretion of the bankruptcy court and will be reversed only for an abuse of that discretion. In re Shondel, 950 F.2d 1301, 1304 (7<sup>th</sup> Cir. 1991). The courts have consistently held that in exercising its discretion to reopen a case, “the bankruptcy court should exercise its equitable powers with respect to substance and not technical considerations that will prevent substantial justice.” In re Stark, 717 F.2d 322, 323 (7<sup>th</sup> Cir. 1983). In fact, as the Shondel Court noted, the trend in reopening cases under Section 350(b) has thus been “to allow the bankruptcy judge broad discretion to weigh the equitable factors in each case.”

10. In finding that the bankruptcy court had sufficient cause to reopen Shondel's case in order to modify the permanent injunction, the Shondel court emphasized that since the modified injunction prohibited any recovery from Shondel personally, she is not harmed or seriously prejudiced by the reopening. The Court further noted that debtors-defendants suffer little prejudice when they are sued by plaintiffs who seek nothing more than declarations of liability that can serve as a predicate for recovery against insurers. In re Shondel, 950 F.2d 1301, 1304.

11. In the event this matter is reopened so that the Movant can present the appropriate motion for leave to file the administrative expense claim form and pursue her personal injury claim, there too would be no prejudice upon Kmart as the Movant would not be seeking to recover any monetary damages from Kmart personally but rather would be limited to the applicable liability insurance for Kmart.

12. It would be unjust to prevent this Movant from continuing to pursue her personal injury claim due to such a minor technical deficiency as failing to complete

some type of administrative expense claim form, especially when considering that neither the Movant nor Movant's attorney ever received any such claim form and despite the absence of such a completed form, Kmart was notified of the Movant's incident and resulting injury in 3 different forms and at 3 different times. (See the aforesaid motion attached hereto as Exhibit A which clearly outlines the reasons for why the Movant failed to complete such a form and the manner in which Kmart was sufficiently notified of her claim).

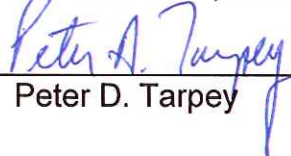
13. In fact, the Movant timely provided Kmart with more information concerning her claim than had she simply completed the administrative expense claim request form.

14. Therefore, this Court should exercise its equitable powers so as to prevent such a minor technical deficiency from interfering with an individual's right to justice and fairness, and in so doing this matter should be reopened "for cause".

WHEREFORE, the Movant respectfully requests this honorable Court to enter an order allowing this matter to be reopened so that the Movant may then proceed with her motion for leave to file an administrative expense request claim form, instantler.

Respectfully submitted,

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