

Claims objection
Service requirements
Due process
FRBP 3007, 7004, 9014

Monk v. LSI Title, et al., Adversary No. 10-6067-fra
Lester and Mary Monk, Case No. 04-60712-fra13

8/9/2013

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Unpublished

An objection to claim was filed by the chapter 13 trustee and served on the secured creditor by mailing the required information to the address provided by creditor on its filed proof of claim. The creditor did not respond to the objection, and the self-executing order disallowing the claim in full was effected. The chapter 13 case ran its course, Debtors were granted a discharge, and the case was closed. Thereafter, the successor to the secured creditor initiated collection activities against the Debtors.

Debtors filed this adversary proceeding against Defendants seeking, *inter alia*, an injunction against foreclosure, lien stripping, quiet title in Debtors, and sanctions for violation of the discharge injunction.

The issue regarding the sufficiency of service of the objection to claim arose during pre-trial deliberations. Trial on that issue was held prior to trial on Plaintiffs' claims, with the matter taken under advisement.

The court determined that service should have been made pursuant to FRBP 7004, which requires that the objection be mailed to an officer or authorized agent of the corporation. Because service was made only to the corporation at its P.O. Box, the address provided on creditor's proof of claim, it did not meet the requirements of the Bankruptcy Rules. Because no evidence was produced that a person charged with responding to service received actual notice of the objection to claim prior to the effective date of the order disallowing the claim, the secured creditor was denied its due process rights. The effect of a denial of due process is that the order disallowing claim was void *ab initio*.

Because the secured creditor's claim was never disallowed, it follows that Debtors' claim for violation of the discharge injunction and other asserted claims must fail. The court held that the complaint must be dismissed.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)	Bankruptcy Case
)	No. 04-60712-fra13
LESTER G. MONK, and)	
MARY L. MONK,)	
Debtors.)	
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LESTER G. MONK, and)	
MARY L. MONK,)	
Plaintiffs)	
v.)	
LSI TITLE COMPANY OF OREGON, LLC,)	
LITTON LOAN SERVICING, LP,)	
U.S. NATIONAL BANK ASSOC., as Trustee)	Adversary Proceeding
under a pooling and servicing agreement dated as of)	No. 10-6067-fra
March 1, 2002,)	
MORGAN STANLEY DEAN WITTER CAPITAL)	
I INC. TRUST 2002-NCI, and)	
DOES 1 through 10,)	
Defendants.)	MEMORANDUM OPINION

This matter came on for trial on July 30, 2013, at the conclusion of which the court took the matter under submission. After considering the evidence and testimony presented, the Court finds that the Defendants' due process rights were violated as they allege, necessitating the dismissal of this adversary proceeding. My reasons follow.

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1 BACKGROUND

2 A. Debtors' Bankruptcy Case.

3 Debtors (Plaintiffs herein) filed a bankruptcy petition under chapter 13 on February 4, 2004. Debtors
4 listed on Schedule D a claim held by PCFS Mortgage Resources secured by Debtors' personal residence in
5 Selma, Ore. PCFS thereafter filed a proof of claim (#10) in the amount of \$112,809. Debtors' chapter 13
6 plan was filed on February 19, 2004 and provided for a \$150 per month payment through the Trustee to cure
7 a pre-petition default to PCFS of \$6,000 and also provided for the payment of ongoing mortgage payments
8 directly to PCFS. The Plan was confirmed by order entered March 30, 2004.

9 During this time, the Trustee had attempted to obtain documentation from PCFS of its security
10 interest and evidence of perfection. When PCFS failed to respond, the Trustee filed an objection to PCFS's
11 \$112,809 claim on the basis that the proof of claim did not include a copy of the security agreement and
12 evidence of perfection. The objection was in the form of a self-executing order and notice thereof which
13 gave PCFS 32 days either to send the requested documentation to the Trustee or to file a written request for
14 hearing. Failure to respond in the manner required would result in the claim being "[d]isallowed in full."
15 The objection/order was delivered to PCFS at the address listed in its proof of claim. No response was made
16 and no appeal was filed to the order disallowing the claim. The Debtors continued in chapter 13, completed
17 all required plan payments, and obtained an order of discharge on March 15, 2007. The case was closed on
18 April 10, 2007. The Trustee's Final Account and Report discloses that no payments were made by the
19 Trustee to PCFS on its arrearage claim.

20 B. The Adversary Proceeding.

21 On February 10, 2010, Debtors filed a motion to reopen their bankruptcy case in order to reinstate the
22 automatic stay to prevent foreclosure of their residence and to file an adversary proceeding. The case was
23 reopened on February 12 to allow the adversary proceeding to be filed and thereafter closed. This adversary
24 proceeding was filed seeking several remedies, and a preliminary injunction preventing the complained of
25 foreclosure was entered, after notice and hearing.

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1 claim and resulting order denying that claim. The Plaintiffs' cross-motion for summary judgment was
2 denied on that basis, and trial was scheduled on that matter prior to considering the claims asserted by
3 Plaintiffs.

4 A. Service of the Objection to Claim was Inadequate

5 Objections to claim are governed by Fed.R.Bankr.R. 3007.¹ Rule 3007(a) provides that “[a] copy of
6 the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the
7 debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.”² An objection to claim
8 is a contested matter, governed by Rule 9014. Rule 9014(b) requires that a motion initiating a contested
9 matter be served in the manner provided for service of a summons and complaint by Rule 7004. Since the
10 claimant in this matter was a corporation, service of the objection by mail was governed by Rule 7004(b)(3):

11 Upon a domestic or foreign corporation...by mailing a copy of the [objection] to the attention
12 of an officer, a managing or general agent, or to any other agent authorized by appointment or
by law to receive service of process....

13 The Trustee's objection was mailed to PCFS at “PCFS Mortgage Resources, 309 Vine Street ML 175D,
14 Cincinnati, OH 45202,” the address provided by PCFS on its filed proof of claim.³ It was not addressed to
15 the attention of any officer or individual. In short, the service did not comply with Rules 9014 and 7004.

16 It has been argued in other courts that an objection to claim is not subject to Rules 9014(b) and 7004,
17 and that notice by mail under Rule 3007(a) is sufficient. *See In re Anderson*, 330 B.R. 180 (Bankr. S.D.Tex.

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19 ¹ All references herein, unless otherwise specified, to a “Rule” are to the Federal Rules of
Bankruptcy Procedure.

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21 ² The rule contemplates that a hearing will be set more than 30 days out as soon as the objection is
received. Local practice provides that no hearing will be had unless the claimant affirmatively responds to
22 the objection. Had the creditor in this case responded to the Trustee's objection to proof of claim, a hearing
would have been conducted. This procedure is consistent with the Bankruptcy Code. See Code § 102(1)(B).

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24 ³ Service to this address was made pursuant to Local Bankruptcy Rule 3007-1 and Local Bankruptcy
Form 763, which require use of the current filed address. However, Federal Rules 9014 and 7004 govern
25 service of an objection to claim, and no local rule can contradict the Federal Rules by replacing the service
locations in Federal Rule 7004. *See In re Gordon*, 2013 WL 1163773, slip op. at 4 (Bankr. D.Nev.
26 2013)(cites to Fed.R.Bankr.P. 9029 which provides that a local bankruptcy rule cannot be inconsistent with
the Federal Rules of Bankruptcy Procedure).

1 2005); *In re State Line Hotel, Inc.*, 323 B.R. 703 (9th Cir. BAP 2005).⁴ Rule 9014(a) provides that “[i]n a
2 contested matter not otherwise governed by these rules, relief shall be requested by motion”
3 Rule 9014(b) specifies how service of that motion shall be made: pursuant to Rule 7004. The *Anderson* and
4 *State Line* opinions hold that an objection to claim is not commenced with a “motion,” and is “otherwise
5 governed by” Rule 3007, making service under Rule 7004 unnecessary. In essence, that even though an
6 objection to claim may be a contested matter, Rule 9014(a) defers to Rule 3007 regarding notice of an
7 objection to claim.

8 This court disagrees with the reasoning in the *Anderson* and vacated *State Line Hotel* opinions. The
9 better reasoning is found in *In re Levoy*, 182 B.R. 827 (9th Cir. BAP 1995), a Bankruptcy Appellate Panel
10 opinion decided before *State Line Hotel*, which this court finds to be the controlling opinion in this Circuit.

11 Fed.R.Bankr.P. 3007 does not provide the manner for service of the objection to a
12 proof of claim. However, the rule’s Advisory Committee Note states: “The contested
13 matter initiated by an objection to a claim is governed by rule 9014....” Fed.R.Bankr.P.
9014, which pertains to contested matters, in turn, makes applicable the service
provisions of Fed.R.Bankr.P. 7004.

14 *Id.* at 834. In essence, Rule 9014(b) provides the manner in which service of the objection to claim should
15 be made, while Rule 3007(a) supplements that provision by providing more specific information about who
16 should receive notice of the hearing and when. Rule 3007 is not a substitute for service of the objection to
17 claim. The fact that a claim objection is initiated by an objection rather than a motion does not remove the
18 matter from the service requirements of Rule 9014(b).

19 B. Defendants Did Not Receive Due Process

20 Due process requires “notice reasonably calculated, under all the circumstances, to apprise interested
21 parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v.*
22 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Defendants have the initial burden to
23 establish a prima facie error in service. *In re Villar*, 317 B.R. 88, 94 (9th Cir. BAP 2004). That burden was
24 satisfied because the proof of service of the objection to claim establishes on its face that service was not

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26 ⁴ The *State Line Hotel* opinion was thereafter vacated as moot by the Court of Appeals. 242
Fed.Appx. 460, 2007 WL 1961935 (9th Cir. 2007).

1 made pursuant to Rule 7004(b)(3). However, “[t]he standards for service on individuals and corporations are
2 to be liberally construed to further the purpose of finding personal jurisdiction in cases where the party has
3 received *actual notice*.” *Id.* (*italics in original*). In *Villar*, the Panel found that due process was lacking
4 because service of the motion did not comply with Rule 7004 and that defective service deprived the
5 intended recipient of its due process rights.

6 Plaintiffs’ evidence established that the notice, which was unquestionably mailed to PCFS’s address,
7 was not returned, thus demonstrating that PCFS had actual notice of the objection. The inference is a fair
8 one, and consistent with the so-called “mailbox rule,” which holds that a document duly mailed is presumed
9 to have been received, absent evidence of its return or some other misadventure. The Court can conclude
10 from the evidence before it that the Trustee’s objection found its way to PCFS and, perhaps, that some
11 employee of PCFS opened the envelope and may have become aware of its contents. However, “[a]
12 presumption that the mail was received by [PCFS] does not include the presumption that the [notice of
13 objection to claim] was received by an officer or authorized agent. Only if the notice is ‘directed to a
14 corporation and the attention of an officer or agent as identified in Rule 7004(b)(3)’ can it be considered to
15 have been received by a person who is charged with responding to the service.” *Villar* at 94 (internal citation
16 omitted). Because there is no evidence, either actual or presumptive, that a party charged with responding
17 to service received actual notice prior to entry of the order denying the claim, the defective service deprived
18 PCFS of its due process rights. The order disallowing PCFS’s proof of claim was therefore void *ab initio*.
19 *Levoy*, 182 B.R. at 833.

20 CONCLUSION

21 Since the order disallowing the claim was void, the lien was not avoided by the bankruptcy. The
22 holder of a lien on a debtor’s property may act after a case is closed to enforce the lien, and may enter into an
23 agreement modifying the debt or the lien securing it. Defendants’ actions after the plan was confirmed and
24 the Debtors received their discharge and the case was closed did not violate the discharge injunction.
25 Plaintiffs are not, therefore, entitled to any of the relief sought in their amended complaint, which must be
26 dismissed. Defendants are entitled to their reasonable costs and attorney fees, as provided for in the

1 underlying agreements. The preliminary injunction will be dissolved effective on the date the order is entered
2 closing the adversary proceeding.

3 The foregoing constitutes the Court's findings of fact and conclusions of law. Counsel for
4 Defendants should submit a form of judgment consistent with this Memorandum Opinion.

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FRANK R. ALLEY, III
Chief Bankruptcy Judge