

Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
STEPHEN R. MYRON) CASE NO. 08-14268
)
)
Debtor)

DECISION AND ORDER
GRANTING MOTION TO RECONSIDER

At Fort Wayne, Indiana, on January 20, 2010.

The order of November 23, 2009 sustained the debtor's objection to Claim No. 2 which had been filed by the Department of Treasury – Internal Revenue Service and allowed that claim in the sum of \$328,007.52, rather than the much larger amount claimed due. The IRS promptly asked the court to reconsider that order and it is that motion which is presently before the court.

The IRS argues that it was not properly served because neither the objection nor the associated notice of it were served upon the United States Attorney General, as required by Rules 9014(b) and 7004(b)(4) and (5) of the Federal Rules of Bankruptcy Procedure. In response, the debtor argues that claim objections are not contested matters, so that Rules 9014(b) and 7004 do not apply. Instead, service need only be made in accordance with Rule 3007(a) and its requirements have been satisfied because both the objection and the notice of it were served upon the IRS at the address listed in the claim and upon the local United States Attorney. There is no dispute that the Attorney General was not served: the controversy centers upon whether that was required and whether Rule 3007(a) establishes obligations concerning service that are different from what Rule 7004(b)(4) and (5) require.

In bankruptcy proceedings, as in traditional civil litigation, the failure to properly serve the

opposing party justifies relieving them of a final order. See, Mid-Continent Wood Products, Inc. v. Harris, 936 F.2d 297 (7th Cir. 1991); In re Maloni, 282 B.R. 727, 731-32 (1st Cir. BAP 2002). Furthermore, the Seventh Circuit Court of Appeals has expressed a decided preference for strict compliance with the legal requirements concerning the manner in which service is to be made. See, McMasters v. U.S., 260 F.3d 814, 817-18 (7th Cir. 2001); Mid-Continent Wood Products, Inc. v. Harris, 936 F.2d 297, 301 (7th Cir. 1991). Substantial compliance is not enough. Neither will the opposing party's actual knowledge of the action and/or communication concerning its cure deficiencies in service. Unless service was properly made, the court's order should be set aside. See, Id.

Of the decisions that have considered the issue, the vast majority have concluded that an objection to a proof claim initiates a contested matter within the scope of Rule 9014. See, Fed. R. Bankr. P. Rule 9014, Advisory Committee Note (1983) ("the filing of an objection to a proof of claim . . . creates a dispute which is a contested matter."). See also, In re Simmons, 765 F.2d 547, 552 (5th Cir. 1985); In re Laughlin, 210 B.R. 659, 660-61 (1st Cir. BAP 1997); United States v. Oxylynce Corp., 115 B.R. 380 (N.D. Ga. 1990); In re Boyken, 246 B.R. 825, 827 (Bankr. E.D. Va. 2000). As such, it should be served in the manner provided by Rule 7004. Fed. R. Bankr. P. Rule 9014(b). Where service is made upon an agency of the United States, that requires, among other things, "mailing a copy . . . to the Attorney General of the United States . . ." Fed. R. Bankr. P. Rule 7004(b)(4).

Rule 3007 does not create a different rule for service of objections to claims. To the extent relevant here, it says only that the objection "shall be mailed or otherwise delivered to the claimant . . ." Fed. R. Bankr. P. Rule 3007(a). One must look elsewhere to determine where that is to be done

and, where the United States is concerned, that elsewhere is Rule 7004(b)(4) and (5). The fact that service was directed to the address designated by the IRS for the list of addresses maintained by the clerk of this court, see, Fed. R. Bankr. P. Rule 5003(e), does not alter the court's conclusion. While such an address is "conclusively presumed to be a proper address for the governmental unit," id., Rule 5003(e) does not make service at that address sufficient. In other words, one rule, in this instance Rule 7004(b)(4) and (5), tells you who must be served; armed with that knowledge, you can turn to Rule 5003(e) and the list it requires to learn where that someone can be found.

The motion to reconsider is GRANTED and the court's order of November 23, 2009 sustaining the debtor's objection to the proof of claim filed by the Internal Revenue Service is vacated. Debtor shall serve its objection to that claim, and the associated notice of it, upon the creditor as required by Rules 9014(b) and 7004(b) of the Federal Rules of Bankruptcy Procedure and make due proof thereof. Any further proceedings on the objection will be set by separate order.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court