

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
MELVIN H. KECK and) CASE NO. 09-31961 HCD
NANCY J. KECK,) CHAPTER 13
)
DEBTORS.)

Appearances:

Debra L. Miller, Trustee, Post Office Box 11550, South Bend, Indiana 46634-0956; and

Laura R. Faulkner, Esq., counsel for creditor, Weltman, Weinberg & Reis Co., L.P.A., 525 Vine Street, Suite 800, Cincinnati, Ohio 45202.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 25, 2010.

Before the court is the Motion to Reconsider filed by RBS Citizens, N.A. (“claimant” or “creditor”), a secured claimant in the chapter 13 proceeding of the debtors Melvin H. Keck and Nancy J. Keck. For the reasons that follow, the court denies the creditor’s Motion to Reconsider.¹

Background

Citizens Auto Finance lent the debtors \$13,648.97 for the purchase of a 2007 Chrysler PT Cruiser. It filed a proof of claim in the debtors’ bankruptcy. On January 4, 2010, the Trustee filed an objection to the claim on the ground that Citizens Auto Finance did not attach to its proof of claim a copy of the title, which would have proved that the creditor held a perfected security interest. The creditor did not file a timely response to the Trustee’s objection. On February 8, 2010, therefore, the court entered its Order granting the Trustee’s objection and disallowing the claim.

¹ The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

On March 18, 2010, RBS Citizens, N.A., filed a Motion to Reconsider that Order. Without explaining the relationship between RBS Citizens, N.A., and the named claimant Citizens Auto Finance, RBS Citizens asserted that the disallowance of a claim may be reconsidered for “cause” pursuant to 11 U.S.C. § 502(j). The “cause” it claimed for the reconsideration was the “mistake, inadvertence, surprise, or excusable neglect” found in Federal Rule of Civil Procedure 60(b)(1), which applies in bankruptcy cases pursuant to Federal Rule of Bankruptcy Procedure 9024. According to the creditor, because the Trustee’s objection to the claim was not addressed to the creditor’s bankruptcy department, it did not reach the appropriate staff in sufficient time to file a response to the objection. *See* R. 42 at 2. It insisted that it had a perfected lien on the motor vehicle and therefore a valid secured claim. It sought reconsideration of the disallowance of its claim.

Discussion

Under the Bankruptcy Code and its Rules, the court may reconsider a disallowed claim “for cause.” *See* 11 U.S.C. § 502(j); Fed. R. Bankr. P. 3008. Because the creditor’s Motion to Reconsider was filed more than ten days after entry of the court’s Order, the court treats it as a motion for relief from the Order under Rule 60(b) of the Federal Rules of Civil Procedure. *See Bell v. Eastman Kodak Co.*, 214 F.3d 798, 800 (7th Cir. 2000); *Helm v. Resolution Trust Corp.*, 43 F.3d 1163, 1166-67 (7th Cir. 1995). Under that rule, made applicable in bankruptcy cases by Federal Rule of Bankruptcy Procedure 9024, “the court may relieve a party or a party’s legal representative from a final judgment, order, or proceeding” for six listed reasons. The creditor’s legal basis for reconsidering the court’s Order was Rule 60(b)(1). “Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional circumstances.” *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006) (quotation, citation omitted). The burden of showing those extraordinary circumstances is on the party seeking relief from the Order at issue. *See In re Czykoski*, 320 B.R. 385, 389 (Bankr. N.D. Ind. 2005).

The creditor complains that the objection to the claim was not addressed to the creditor's bankruptcy department. However, the Trustee's objection was mailed to the claimant, the debtor and the trustee as required under Rule 3007(a) of the Federal Rules of Bankruptcy Procedure. The Trustee used the address provided by the claimant on the proof of claim, and that address did not include "Bankruptcy Department." See *Dellamarggio v. B-Line, LLC (In re Barker)*, 306 B.R. 339, 347 (Bankr. E.D. Cal. 2004) (finding that an objection to claim need only be served by mail to the address that the claimant provided on the proof of claim). The Proof of Claim form, Official Form 10, requires the claimant to provide the appropriate name and address "where notice should be sent." The Trustee used the name and address provided by this claimant. See *id.*; see also *Bank One, N.A., v. Bever (In re Bever)*, 300 B.R. 262, 268 (6th Cir. B.A.P. 2003) (stating that, when service of trustee's objection was received and was not returned, trustee had no further duty of service of process). The fault therefore lies in the claimant's own internal methods of processing its mail so that notices do in fact "reach the proper staff in sufficient time to file a response." R. 42 at 2. Ineffective, or even incompetent internal processing by a creditor of an objection to a claim does not constitute mistake, inadvertence, or excusable neglect, the Rule 60(b)(1) tests. What we have here is, in fact, inexcusable neglect.

The court finds that the claimant was not successful in its burden of establishing a meritorious reason for relief from the court's Order of February 8, 2010. The Motion to Reconsider filed by RBS Citizens, N.A., is denied.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT