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BY JEFFREY CHUBAK¹

Bankruptcy Rule 7004 May Apply to Claim Objections

Courts are split as to whether the service requirements set forth in Rules 9014(b) and 7004 of the Federal Rules of Bankruptcy Procedure (FRBP) apply to claim objections. The dispute hinges on whether Rule 3007(a), which governs claim objections, removes such objections from the scope of Rule 9014, which governs contested matters. Pursuant to Rule 9014(b), a “motion” must be served “in the manner provided for service of a summons and complaint by Rule 7004,” but Rule 9014(a) provides that relief need only be requested by a motion “[i]n a contested matter not otherwise governed by” the FRBP. Rule 3007(a), in turn, provides that claim objections must be “mailed or otherwise delivered to the claimant, the debtor ... and the trustee at least 30 days prior to the hearing.”

Courts holding that claim objections are not governed by Rules 9014(b) and 7004 generally observe that the claim objections are not “motions” and therefore hold that such objections commence contested matters “otherwise governed by” Rule 3007(a) within the meaning of Rule 9014(a). As a result, Rule 9014(b) does not apply to such objections.² Alternatively, such courts hold that a claimant’s listing in the portion of the proof of claim form marked “name and address where notices should be sent” estops the claimant from asserting that it was not properly served with a claim objection (provided that the objection was served on the address listed) and/or results in the implied appoint-

ment of the addressee as the claimant’s agent for the purpose of receiving service of a claim objection.³ Courts reaching the opposite conclusion generally hold that Rule 3007(a) only provides claim-objection-specific notice requirements but does not include service instructions, and therefore does not remove claim objections from the scope of Rule 9014(b)’s service requirements.⁴

A recent decision by Hon. **Linda B. Riegler**, *In re Gordon*, highlights this split and adds a notch to the side of courts holding that Rule 7004 applies to claim objections.⁵ As described below, which interpretation of Rules 3007(a) and 9014 prevails has significant consequences for large chapter 11 cases, since debtors filing omnibus objections to numerous claims in such cases by and large do not ensure that such objections are served in accordance with Rule 7004, but nevertheless obtain default judgments disallowing the claims of the many parties that fail to file timely responses to such objections.

The Facts

In *Gordon*, a chapter 13 debtor filed an objection to a proof of claim filed by Bank of America. The debtor’s certificate of service indicated that the objection was served on Bank of America at the address listed in its proof of claim for where notices



Jeffrey Chubak
Proskauer; New York

Jeffrey Chubak is an associate in Proskauer’s Business Solutions, Governance, Restructuring and Bankruptcy Group in New York.

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² See, e.g., *In re State Line Hotel Inc.*, 323 B.R. 703, 714 (B.A.P. 9th Cir. 2005), vacated as moot, 242 Fed. Appx. 460 (9th Cir. 2007); *In re Wilkinson*, 457 B.R. 530, 546 (Bankr. W.D. Tex. 2011) (citing cases); *In re Franchi*, 451 B.R. 604, 608 (Bankr. S.D. Fla. 2011); *In re Cagle*, No. 07-11689, 2008 WL 784772, at *4 (Bankr. N.D. Ga. June 2, 2008); *In re Anderson*, 330 B.R. 180, 186 (Bankr. S.D. Tex. 2005) (“An objection to a claim is a contested matter not commenced by a motion and that is otherwise governed by Rule 3007; therefore, Rule 7004 does not govern. Further, since Rule 3007 is the specific rule concerning objections to claims, it controls service of such an objection rather than the more general Rule 9014(b).”); *In re Hawthorne*, 326 B.R. 1, 4 (Bankr. D. Col. 2005) (“[T]he nature and practicalities of the claims process demonstrate that the rule-makers did not intend to require service of an objection to claim under Rule 7004.”).

³ See, e.g., *In re Village Craftsman*, 160 B.R. 740, 745 (Bankr. D.N.J. 1993) (party “cannot submit an address to the court [on a proof of claim] as that to which all notices should be sent and then argue that it was not properly served when notices are sent to that address”); *In re Ms. Interpret*, 222 B.R. 409, 415 (Bankr. S.D.N.Y. 1998) (attorney designated on proof of claim was deemed implied agent of claimant); *In re Chess*, 268 B.R. 150, 157 (Bankr. W.D. Tenn. 2001) (“[T]he address designated by a creditor on its proof of claim evidences ‘appointment’ and satisfies the requirements of Rule 7004, effectuating service of process.”).

⁴ See, e.g., *In re Levoy*, 182 B.R. 827, 833-34 (B.A.P. 9th Cir. 1995); *United States v. OxyLance Corp.*, 115 B.R. 380, 381 (N.D. Ga. 1990); *In re F.C.M. Corp.*, No. 87-cv-0946, 1987 WL 364456, at *3 (S.D. Fla. Sept. 22, 1987); *In re Sunde*, No. 07-10151, 2007 WL 3275128, at *2 (Bankr. W.D. Wis. Oct. 2, 2007); *In re Boykin*, 246 B.R. 825, 827 (Bankr. E.D. Va. 2000) (“Rule 3007 ... does not provide for alternative service. Consequently, Rule 7004 is applicable. It sets out the manner in which service of an objection to a proof of claim must be made.”).

⁵ No. 11-22221, 2013 WL 1163773 (Bankr. D. Nev. March 20, 2013).

should be sent (Bank of America’s bankruptcy department in Greensboro, N.C., and “Dean Prober, Esq., on behalf of Bank of America.”) Prober had filed Bank of America’s claim and a “request for special notice” in the bankruptcy case. When Bank of America failed to file a timely response to the objection, the court entered an order disallowing Bank of America’s claim.⁶

The debtor subsequently commenced an adversary proceeding seeking to avoid Bank of America’s lien on the grounds that the order was entitled to preclusive effect. The debtor’s summons and complaint were served on Bank of America at the aforementioned addresses, and again, Bank of America failed to file a timely response.⁷

When the debtor moved for a default judgment in the adversary proceeding, the court observed that the debtor’s claim objection was not served upon a Bank of America officer, as required by Rule 7004, and on its own motion, the court set a hearing for the debtor to show cause why the order granting the claim objection should not be vacated on the grounds that Bank of America was not properly served.⁸

Analysis

In response, the debtor offered four arguments as to why the court’s order granting the claim objection should not be vacated, each of which the court rejected. First, the debtor argued that claim objections are not subject to Rule 7004’s service requirements. Specifically, the debtor relied on *State Line Hotel*, a Ninth Circuit Bankruptcy Appellate Panel (BAP) decision holding that Rule 7004 does not apply to claim objections pursuant to Rule 9014 because claim objections are not motions and because Rule 3007(a) specifies the manner in which such objections must be served.⁹

The *Gordon* court dismissed this argument on several grounds. The court initially noted that the advisory committee notes to Rules 9014 and 3007 make it clear that Rule 9014 was intended to apply to contested matters commenced by claim objections and thus, claim objections should not be carved out of Rule 9014(b)’s requirement that motions be served in accordance with Rule 7004.¹⁰ The court further observed that in *Levoy*, a Ninth Circuit BAP decision entered 10 years prior to *State Line Hotel*, the BAP held that Rule 7004 applies to claim objections pursuant to Rule 9014(b), since Rule 3007(a) “does not provide the manner of service of the objection to a proof of claim.”¹¹ In addition, the court held that Rule 3007(a) is wholly consistent with Rule 9014 and therefore does not trigger the carve-out in Rule 9014(a) since Rule 3007(a) mandates specific notice requirements in connection with claim objections, but not service requirements, which continue to be governed by Rule 9014(b).¹²

Second, the debtor argued that mailing the claim objection to the address listed in the proof of claim “is sufficient

for service of an objection to claim,” relying on cases holding that Rule 7004 does not apply to claim objections.¹³ The court acknowledged several decisions holding as much,¹⁴ but nevertheless held that such service did not satisfy the Rule 7004’s service requirements. Specifically, the court held that although the address listed in a proof of claim may be used to facilitate a “Rule 2002-type notice,” such addresses may not be relied upon for the purpose of serving a claim objection unless the addresses also satisfy Rule 7004, because claim objections, unlike most bankruptcy notices, affect substantive rights and therefore require “a more rigorous type of notice.”¹⁵ In support of this conclusion, the court relied on Hon. **Samuel L. Bufford**’s dissent in *State Line Hotel*, which provided, in relevant part:

Mere notice, of the sort appropriate for the many other types of bankruptcy events in which the creditor may have little interest, does not suffice to alert a creditor to [the] consequence [of disallowance of its claim]. For this reason, the Bankruptcy Rules require service of a claim objection on a creditor of the type required for a summons and complaint ... so that it will be brought to the attention of the appropriate personnel of the creditor who are trained to deal with such legal problems. This duty does not fall on a clerk who puts his or her name in the box of Form B10 for notice purposes.¹⁶

Third, the debtor argued that Bank of America’s attorney, Prober, was authorized to accept service of the claim objection, both because an employee of his law firm executed the proof of claim (which was filed electronically using his ECF password) and because he filed a request for special notice “request[ing] that copies of any documents ... for which claimant Bank of America ... is entitled to service or notice ... also be sent to *the agent for Bank of America* ... addressed as follows: Prober & Raphael...”¹⁷

The court held that this was insufficient to establish proof of Prober’s agency, either expressed or implied, to accept service of the claim objection on Bank of America’s behalf, despite the fact that the request for special notice specifically stated that debtor’s counsel served as Bank of America’s agent. The court noted that the request for special notice only requested “copies” of documents and did not constitute “sufficient proof that Bank of America had expressly authorized [Prober] to accept *service* of an objection.”¹⁸ In addition, the court observed that even in *State Line Hotel*, the BAP held that the filing of a proof of claim by an attorney is insufficient to establish an implied agency relationship.¹⁹

Fourth, the debtor argued that service on Mr. Prober satisfied Rule 7004(h)(1), which provides that service of a bank may be affected by serving the bank’s attorney, provided that the bank “has appeared by its attorney.” The court reject-

6 *Id.* at *1.

7 *Id.*

8 *Id.*

9 *Id.* (citing *State Line Hotel*, 323 B.R. at 703).

10 *Id.* at *2 n.6 (“The Advisory Committee Note to Rule 9014 states [that] ... [t]he filing of an objection to a proof of claim ... creates a dispute which is a contested matter[.]” ... Similarly, the Advisory Notes to Rule 3007 provide [that] “[t]he contested matter initiated by an objection to a claim is governed by Rule 9014[.]”).

11 *Id.* at *2 (quoting *Levoy*, 182 B.R. at 834). The *State Line Hotel* BAP determined that its prior holding in *Levoy* was “not entitled to precedential weight” since the *Levoy* decision did not adequately analyze whether Rule 3007(a) has the effect of carving claim objections out of Rule 9014(a). See *State Line Hotel*, 323 B.R. at 712-13.

12 *Gordon*, 2013 WL 1163773, at *3.

13 *Id.* at *2, *4.

14 *Id.* at *4 (citing *In re Hensley*, 356 B.R. 68, 78-80 (Bankr. D. Kan. 2006); *Anderson*, 330 B.R. at 186; and *Franchi*, 451 B.R. at 608).

15 *Id.*

16 *Id.* (quoting *State Line Hotel*, 323 B.R. at 720 (Bufford, J., dissenting)).

17 *Id.* at *5 (emphasis added).

18 *Id.* (emphasis in original).

19 *Id.* at *5-6 (quoting *State Line Hotel*, 323 B.R. at 711) (“[I]mplied agency is not seriously argued in the case before us, as there were no ‘substantial activities or significant exercise of independent judgment and discretion’ to support an implied agency theory. At most, [the law] office prepared and filed two proofs of claim. [The attorney] neither negotiated for the [the claimant] nor communicated with the court or counsel on her behalf, nor filed anything which identifies [the claimant] as his client.”).

20 *Id.* at *6.

ed this argument on the grounds that neither the filing of a proof of claim nor request for special notice qualified as an “appearance” by Prober for the purpose of Rule 7004(h)(1).²⁰

Implications for Chapter 11 Cases

Whether Rule 7004 applies to claim objections has significant implications for large chapter 11 cases. In such cases, debtors generally object to disputed claims by filing an omnibus objection to numerous claims and serving such objections on affected claimants at the addresses set forth in their respective disputed claims, without regard for whether such service complies with Rule 7004.²¹ If a party whose claim is identified in the objection fails to file a timely response to the objection, a default judgment will generally be entered disallowing such claim.

In districts where courts have held that Rule 7004 applies to claim objections, this common practice will result in the entry of orders disallowing claims where the claimants were not properly served with a claim objection. Improperly served claimants may then subsequently move to vacate the default judgment entered against them pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure (which provides that a party may be relieved from a final judgment if the judgment is void), made applicable pursuant to Rule 9024 on the grounds that the bankruptcy court lacked personal jurisdiction over the claimants because they were not properly served.²²

Accordingly, debtors in districts where courts have held that Rule 7004 applies to claim objections should be mindful of this issue and should not rely exclusively on the addresses listed in proofs of claim when serving claim objections. Rather, debtors in such districts should ensure that claim objections are served in accordance with Rule 7004. **abi**

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²¹ If permitted by local rule or order of the court, debtors may, in lieu of serving the omnibus objection on affected claimants, debtors may serve a notice on claimants that identifies their claims that are the subject of the objection and includes other relevant information, such as the relevant hearing date and response deadline. See, e.g., Del. Bankr. L.R. 3007-1(e)(v) (requiring that each holder of challenged claim receive copy of claim objection or notice that substantially conforms to relevant local form).

²² See *Omni Capital Int'l v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987) (“Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.”); *Sunde*, 2007 WL 3275128, at *3 (vacating order disallowing claim pursuant to Rule 60(b)(4) of Federal Rules of Civil Procedure on grounds that claimant was not properly served under Rule 7004, and as result, court lacked jurisdiction to determine claim objection).