United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Case No. 24 B 17304
	)	
ANTOINE COLLINS,	)	Chapter 7
	)	
Debtor.	)	Judge David D. Cleary

ORDER GRANTING NEWLINE HOLDINGS LLC'S MOTION TO VACATE ORDER IMPOSING THE AUTOMATIC STAY FOR LACK OF DUE PROCESS AS TO NEWLINE HOLDINGS LLC (EOD 14)

This matter comes before the court on the motion ("Motion to Vacate") of Newline Holdings LLC ("Newline") to vacate the order granting the motion of Antoine Collins ("Debtor") to impose the automatic stay. The court entered a briefing schedule following initial presentation of the Motion to Vacate. Debtor filed a response and Newline filed a reply. Having reviewed the papers filed and the applicable law, the court will grant the Motion to Vacate.

I. BACKGROUND

On or about February 17, 2022, Newline purchased the delinquent 2007-2018 taxes for the real property at 262 Merrill Avenue, Calumet City, Illinois ("Merrill Avenue Property") at the Cook County Collector's scavenger tax sale. The Circuit Court of Cook County entered an order confirming the sale on April 29, 2022. Newline received a certificate of purchase to memorialize the tax sale.

Debtor filed for relief under chapter 13 of the Bankruptcy Code on December 19, 2023. *See* Case No. 23 B 16989 ("First Case"). Newline did not appear in the First Case. The court granted the Trustee's motion to dismiss the First Case on April 3, 2024.

Debtor filed another chapter 13 case on August 2, 2024. *See* Case No. 24 B 11321 ("Second Case"). The Bankruptcy Noticing Center sent notice of the Second Case to a number of parties, including Newline, which received notice at:

NEWLINE HOLDINGS LLC
2012 CORPORATE LANE
SUITE 108
NAPERVILLE, IL 60563-0726

and also at:

Newline Holdings, LLC
Registered Agent – COGENCY GLOBAL INC.
600 SOUTH SECOND ST
SUITE 404
SPRINGFIELD, IL 62704-2542

Newline appeared in the Second Case by the counsel who represents it in this case ("Bach"). Newline objected to Debtor's motion to extend stay and filed both an objection to confirmation of the chapter 13 plan and a proof of claim. The court granted the Trustee's motion to dismiss the Second Case on October 31, 2024.

Debtor filed this chapter 13 case on November 18, 2024 ("Third Case"). On Schedule A, Debtor listed an ownership interest in the Merrill Avenue Property.

Since Debtor had two bankruptcy cases pending within the past year that were dismissed, the automatic stay did not go into effect upon the filing of the Third Case. Therefore, the same day that he filed the Third Case, Debtor filed a motion to impose the stay ("Motion to Impose").[1] On November 25, 2024, the court granted the Motion to Impose.

[1] Newline argues in its Reply that filing the Motion to Impose on the same day as the petition suggests that it "was timed to be as close to the filing of the bankruptcy case to catch parties unware [sic] and let a Motion be granted with little or no scrutiny." Reply, p. 1. The court gives no weight to this argument. Indeed, it is good practice to file a motion to extend stay or a motion to impose stay as soon as possible after a bankruptcy case is commenced.

The certificate of service for the Motion to Impose states that notice was sent by first class mail to Newline at the following address:

Newline Holdings, LLC
PO Box 1285
Northbrook, IL 60065-1285

Neither party disputes that this is not Newline's mailing address. Instead, this is Bach's address. Bach filed a notice of appearance in the Third Case about two weeks after the court granted the Motion to Impose.

In the Motion to Vacate, Newline asserts that the Motion to Impose never arrived at Bach's office. Even if it had arrived, service would not have been sufficient because Bach was not authorized to receive service for Newline. Newline therefore asks the court to vacate the order ("Order Imposing Stay") granting the Motion to Impose.

After the parties filed their briefs, Debtor filed a notice of conversion to chapter 7.[2]

II. DISCUSSION

Newline seeks to vacate the Order Imposing Stay pursuant to Fed. R. Civ. P. 60(b)(4), made applicable by Fed. R. Bankr. P. 9024. Fed. R. Civ. P. 60(b) permits a court to "relieve a party … from a final judgment, order, or proceeding" on one of six grounds. Rule 60(b)(4) authorizes a court to relieve the movant from a judgment if it is void. It "applies … in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). Therefore, when an order is entered in violation of due process notice requirements, Rule 60(b)(4) "is the proper vehicle to

[2] The undersigned is aware that Debtor's counsel contacted chambers after conversion, stating that the Motion to Vacate is moot and it would be unnecessary to rule on it. Newline did not withdraw the Motion to Vacate.

provide relief from such an order." *Erdmann v. Charter One Bank* (*In re Erdmann*), 446 B.R. 861, 865 (Bankr. N.D. Ill. 2011) (discussing confirmation orders).

The court is aware that relief under Rule 60(b) "is an extraordinary remedy and is granted only in exceptional circumstances." *McCormick v. City of Chicago*, 230 F.3d 319, 327 (7th Cir. 2000) (quotation omitted). In this case, however, there has been a violation of due process that deprived Newline of notice and of the opportunity to be heard.

Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). As a tax purchaser, Newline was an interested party that was entitled to notice of Debtor's bankruptcy case and of motions that would impact its interest in the case. "Due process entitles a party of notice and an opportunity to be heard. As applied to a creditor in bankruptcy, this requires the creditor to have notice and an opportunity to be heard of an action that might be taken with respect to its claim." *In re Williams*, No. 19 BK 22007, 2020 WL 2301177, at *2 (Bankr. N.D. Ill. May 7, 2020) (citations omitted).

"[T]he burden of establishing that a creditor has received adequate notice rests with the debtor…. A known creditor is one whose identity is either known or reasonably ascertainable by the debtor…. Known creditors are entitled to actual notice[.]" *In re Queen Elizabeth Realty Corp.*, Case No. 13-12335 (SMB), 2017 WL 1102865, *3 (Bankr. S.D.N.Y. March 24, 2017) (quotations and citations omitted) (considering whether a creditor received actual notice of the claims bar date), *aff'd*, 586 B.R. 95 (S.D.N.Y. 2018). Newline was known to the Debtor, and therefore entitled to actual notice.

In response to Newline's assertion that service on Bach did not satisfy the requirements of due process, Debtor argues that Newline has participated in at least 111 cases in the U.S. Bankruptcy Court for the Northern District of Illinois since 2016, and that Bach represented Newline in each of those cases. He asserts that Bach is presumed to have received the Motion to Impose based on the "mailbox rule," which provides that "proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed." *Hagner v. United States*, 285 U.S. 427, 430 (1932). Debtor contends that "[b]ecause the address listed in the motion to impose was accurate, Newline must rebut the presumption of notice." Response, p. 3.

This argument begs the question of whether the motion was "properly directed." While the address at which Newline was served was an accurate address for Bach, it was not an accurate address for Newline. Newline is the creditor who was entitled to notice. Therefore, the mailbox rule does not apply, and the court will not presume that the Motion to Impose was actually received by Newline.

In addition to satisfying due process, service must also comply with the applicable rules. Motions to impose are governed by 11 U.S.C. § 362(c)(4)(B), which states that if "a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing[.]"

Since § 362(c)(4)(B) requires "notice and a hearing," the Code tells us that the movant must provide "such notice as is appropriate in the particular circumstances[.]" 11 U.S.C. § 102(1). The particular circumstances of a motion to impose stay are that it is a contested matter, and therefore notice is governed by Fed. R. Bankr. P. 9014. Rule 9014 requires that service of contested matters be made in the manner provided in Fed. R. Bankr. P. 7004. For a limited

liability company like Newline, that requires mailing "to an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service[.]" Fed. R. Bankr. P. 7004(b)(3)(A). There is no evidence that Bach is Newline's officer, managing or general agent, or an agent authorized to receive service. Indeed, in its Reply, Newline alleges that "[Bach] does **not** have the authority to accept service on behalf of Newline Holdings LLC and never has." Reply, p. 2.

Debtor argues that Bach is "an implied agent for service" because he represented Newline in other cases and in the Second Case. Response, p. 4. Debtor served Bach at the address provided in the proof of claim filed in the Second Case.

The court acknowledges the case law cited by Debtor holding "that service is sufficient when sent to the address listed on a proof of claim." *Id.* Newline agrees with this line of precedent as well. Reply, p. 2. In three of the four cases Debtor cites, however, the proof of claim was filed *in that case*, prior to service of the matter in question. *See In re Chess*, 268 B.R. 150 (Bankr. W.D. Tenn. 2001); *Ms. Interpret v. Rawe Druck-und-Veredlungs-GmbH* (*In re Ms. Interpret*), 222 B.R. 409 (Bankr. S.D.N.Y. 1998); *In re Vill. Craftsman, Inc.*, 160 B.R. 740 (Bankr. D.N.J. 1993). In the fourth case, the creditor had designated an address for service "in accordance with a local procedure that allowed creditors [who frequently appear in bankruptcy cases] to designate the precise address at which they wanted service of notices." *In re Karbel*, 220 B.R. 108, 110 (B.A.P. 10th Cir. 1998).

Here, Debtor served Newline at the address on the proof of claim filed in the Second Case. While Newline has since filed a proof of claim in the Third Case, and used Bach's address on that proof of claim, one could not know that Bach's address was still viable and accurate for Newline until its proof of claim was on file *in this case*.

Debtor's next argument is that Newline is equitably estopped from denying that it received notice sufficient to satisfy due process. Debtor asserts that he reasonably relied on Newline's conduct in using Bach's address for notice in the proof of claim it filed in the Second Case. "Mr. Collins had no reason to believe the address was misleading." Response, p. 5.

This argument must also fail. There is no evidence that the address used on Newline's proof of claim in Debtor's prior case was misleading. It was an accurate address – *for that case*. Debtor cites *Village Craftsman* in support of his argument. 160 B.R. 740. But in *Village Craftsman*, the question of service at the address on a proof of claim concerned a proof of claim filed in the very same case. That is not the situation before this court today.

Finally, Debtor argues that this court should be guided by the Seventh Circuit's decision in *In re Herman*, 737 F.3d 449 (7th Cir. 2013). In *Herman*, the panel held that service to a creditor's attorney was sufficient, even though the attorney had not yet appeared in the bankruptcy case.

The difference between *Herman* and the case before the court today is that in *Herman*, the creditor's attorney was representing the creditor "in order to collect a debt outside of the bankruptcy" case. *Id.* at 454. The court has no evidence that Bach represented Newline on its claim against Debtor in any forum other than the Second Case. Furthermore, in the Reply, Bach asserted that he "is outside counsel and is retained by Newline Holdings LLC on a case by case basis. The undersigned does **not** have the authority to accept service on behalf of Newline Holdings LLC and never has." Reply, p. 2. The court is mindful that Bach would have written the Reply knowing that Fed. R. Bankr. P. 9011 applied to his representations.

Finally, the creditor in *Herman* was an individual, so it makes sense that a debtor would not be "required to exhaust every possible avenue of information in ascertaining" his address.

Herman, 737 F.3d at 453 (quotation omitted). Here, Newline is a limited liability company with a registered agent easily discovered through the records of the Secretary of State. In fact, its address must not be too difficult to obtain because the Bankruptcy Noticing Center provided notice to Newline at two different addresses – neither of them belonging to Bach – in the Second Case.

III. CONCLUSION

For the reasons stated above, the court will grant Newline's motion. The automatic stay will be imposed immediately, however, and remain in effect until a hearing can be held on Debtor's reinstated motion to impose stay. Therefore, **IT IS ORDERED THAT**:

1. The Motion to Vacate is **GRANTED**;
2. The Order Imposing Stay is **VACATED**;
3. The Motion to Impose is **REINSTATED** and set for hearing on **April 30, 2025 at 10:30 a.m.** at 219 South Dearborn Street, Courtroom 644, Chicago, Illinois. Parties may appear in person or electronically by Zoom for Government – Judge Cleary; and
4. The automatic stay is imposed and will remain in effect through April 30, 2025 at the close of business.

ENTERED:

Date: April 22, 2025

DAVID D. CLEARY
United States Bankruptcy Judge