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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,	)	MEMORANDUM OPINION
Defendants.	)	

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

3 A. Service of the Objection to Claim was Inadequate

4 Objections to claim are governed by Fed.R.Bankr.R. 3007.<sup>1</sup> Rule 3007(a) provides that "[a] copy of  
5 the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the  
6 debtor or debtor in possession, and the trustee at least 30 days prior to the hearing."<sup>2</sup> An objection to claim is  
7 a contested matter, governed by Rule 9014. Rule 9014(b) requires that a motion initiating a contested matter  
8 be served in the manner provided for service of a summons and complaint by Rule 7004. Since the claimant  
9 in this matter was a corporation, service of the objection by mail was governed by Rule 7004(b)(3):

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

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

15 It has been argued in other courts that an objection to claim is not subject to Rules 9014(b) and 7004,  
16 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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18 <sup>1</sup> All references herein, unless otherwise specified, to a "Rule" are to the Federal Rules of  
19 Bankruptcy Procedure.

20 <sup>2</sup> The rule contemplates that a hearing will be set more than 30 days out as soon as the objection is  
21 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).

23 <sup>3</sup> Service to this address was made pursuant to Local Bankruptcy Rule 3007-1 and Local Bankruptcy  
24 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  
26 locations in Federal Rule 7004. *See In re Gordon*, 2013 WL 1163773, slip op. at 4 (Bankr. D.Nev.  
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).<sup>4</sup> Rule 9014(a) provides that “[i]n a  
2 contested matter not otherwise governed by these rules, relief shall be requested by motion....” Rule 9014(b)  
3 specifies how service of that motion shall be made: pursuant to Rule 7004. The *Anderson* and *State Line*  
4 opinions hold that an objection to claim is not commenced with a “motion,” and is “otherwise governed by”  
5 Rule 3007, making service under Rule 7004 unnecessary. In essence, that even though an objection to claim  
6 may be a contested matter, Rule 9014(a) defers to Rule 3007 regarding notice of an objection to claim.

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

10 Fed.R.Bankr.P. 3007 does not provide the manner for service of the objection to a  
11 proof of claim. However, the rule’s Advisory Committee Note states: “The contested  
12 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.

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

#### 18 B. Defendants Did Not Receive Due Process

19 Due process requires “notice reasonably calculated, under all the circumstances, to apprise interested  
20 parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v.*  
21 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Defendants have the initial burden to  
22 establish a prima facie error in service. *In re Villar*, 317 B.R. 88, 94 (9th Cir. BAP 2004). That burden was  
23 satisfied because the proof of service of the objection to claim establishes on its face that service was not  
24 made pursuant to Rule 7004(b)(3). However, “[t]he standards for service on individuals and corporations are

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26 <sup>4</sup> 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 to be liberally construed to further the purpose of finding personal jurisdiction in cases where the party has  
2 received *actual notice*.” Id. (*italics in original*). In *Villar*, the Panel found that due process was lacking  
3 because service of the motion did not comply with Rule 7004 and that defective service deprived the  
4 intended recipient of its due process rights.

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

#### 19 CONCLUSION

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

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1 underlying agreements. The preliminary injunction will be dissolved effective on the date the order is  
2 entered 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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8 FRANK R. ALLEY, III  
9 Chief Bankruptcy Judge  
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