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APR 10 2007

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
CATHERINE HURT,	)	CASE NO. 01-61881-MHM
	)	
Debtor.	)	
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	)	
ADAM M. GOODMAN, Trustee,	)	
	)	
Movant,	)	
	)	
v.	)	<b>CONTESTED MATTER</b>
	)	
HOMEcomings FINANCIAL	)	
NETWORK,	)	
	)	
Respondent.	)	

**ORDER GRANTING MOTION RELIEF FROM ORDER**

On July 5, 2006, the Chapter 13 Trustee filed a Motion to Deem Mortgage Current (the "Mortgage Motion"). In that motion, the Chapter 13 Trustee recited the payments that he had made to Homecomings Financial Network ("Homecomings"), both the monthly payments to cure the prepetition arrearage and the regular monthly payments. The Chapter 13 Trustee sought an order deeming the mortgage obligation to Homecomings current as of July 5, 2006, and specifically requesting that Homecomings "adjust its loan balance to reflect the balance delineated in the original amortization schedule, as of the date of entry

of the Court's order, as if all regular payments had been timely made by Debtor under terms of the mortgage obligation."

The Chapter 13 Trustee served the Mortgage Motion, together with a notice requiring a written response, upon Debtor, Debtor's attorney, Homecomings at two addresses in San Diego, and upon the attorney who had appeared in this case on behalf of Homecomings.<sup>1</sup> No response was filed by or on behalf of Homecomings within the time period provided in the Notice. As a consequence, an order granting the Chapter 13 Trustee's motion was entered July 31, 2006. Debtor's discharge order was entered August 17, 2006.

On September 29, 2006, Homecomings filed a motion for relief from the order entered July 31, 2006 (the "Motion for Reconsideration"). Homecomings asserts that the Mortgage Motion was a proceeding to determine the validity, priority and extent of its lien, or a proceeding seeking a declaratory judgment, and that, pursuant to Bankruptcy Rule 7001, either type of proceeding must be filed as an adversary proceeding. Homecomings' argument appears to be based upon a concept that Constitutional due process requires that proceedings that would fall within those described in Bankruptcy Rule 7001 *must* be filed an adversary proceedings rather than contested matters and that failure to do so invalidates any orders or other action taken without the filing of an adversary proceeding.

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<sup>1</sup> Homecomings' attorney, whose office is located in this district, had filed a notice of appearance March 23, 2001.

At the hearing held October 26, 2006 on the Motion for Reconsideration, Homecomings asserted that the motion was not properly served as required by Bankruptcy Rule 7004 because the Chapter 13 Trustee service of the motion failed to name an officer or general of Homecomings. Bankruptcy Rule 7004 regarding service on corporations, provides:

(b) Service by first class mail

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e) -(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows: ...

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant....

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

Service on a corporation must be directed to the attention of a *named* officer or authorized agent. *Beneficial California Inc. v. Villar*, 317 B.R. 88 (9th Cir. BAP 2004); *In re Faulknow*, 2005 WL 102970, \*2 (Bankr. N.D.Ga. 2005)(J. Bonapfel).

The Chapter 13 Trustee, however, served the attorney employed by Homecomings to represent it in this bankruptcy case. Notice to an attorney of any matter relating to the matter for which that attorney is engaged constitutes notice to his client. *Rogers v. Palmer*, 102 U.S. 263 (1880); *Cooper v. Lewis*, 644 F. 2d 1077 (11th Cir. 1981). Ordinarily, it would be necessary to serve the corporation by addressing service to a named officer or managing agent or an agent for service of process; however, service upon the attorney who has appeared for the corporation in the relevant bankruptcy case is adequate service under Bankruptcy Rule 7004.

This court agrees with Homecomings that the Chapter 13 Trustee's motion should have been filed as an adversary proceeding.<sup>2</sup> The mere fact that the Chapter 13 Trustee failed to commence an adversary proceeding, however, is insufficient to require reconsideration of the order entered granting the Chapter 13 Trustee's Mortgage Motion. *In re Service Mdse Co., Inc.*, 256 B.R. 755 (Bankr. M.D. Tenn. 2000); *In re National Century Financial Enterprises, Inc.*, 289 B.R. 873 (Bankr. N.D. Ohio 2003).

Homecomings received adequate notice of the relief sought by the Chapter 13 Trustee and,

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<sup>2</sup> If any party, i.e. the Chapter 13 Trustee, the debtor or the creditor, needed expedited review of the issues raised in the complaint, such expedited review can be achieved by a simple motion filed in the adversary proceeding.

if Homecomings had filed a timely response, Homecomings would have been accorded all the essential procedural rights accorded by Bankruptcy Rules 7003 *et seq.* Homecomings, however, neglected to respond to the Chapter 13 Trustee's motion until 60 days after entry of the order granting the Chapter 13 Trustee's Mortgage Motion. Homecomings has failed to show any of its procedural due process rights have been abridged. Accordingly, it is hereby

ORDERED that Homecomings' Motion for Reconsideration is *denied*.

**The Clerk, U.S. Bankruptcy Court, is directed to serve** a copy of this order upon Debtor, Debtor's attorney, Respondent, Respondent's attorney, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 10<sup>th</sup> day of April, 2007.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE