IT IS ORDERED as set forth below:

Date: June 02, 2008

W. H. Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBER**
	:	
GLORIA JEAN CAGLE,	:	07-11689-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTOR.	:	BANKRUPTCY CODE

O R D E R

Before the Court is the Motion to Reconsider filed by Delta Community Credit Union (hereinafter "DCCU") in the above-captioned bankruptcy proceeding. In its Motion, DCCU seeks reconsideration of an order disallowing two claims filed by DCUU. Accordingly, this matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(B); § 1334.

FINDINGS OF FACT

The Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code on July 19, 2007. The Debtor scheduled two unsecured debts owed to DCCU, one arising from a credit card in the amount of $4,213, and a second arising from a line of credit in the amount of $975. Notice of the commencement of the Debtor's case was mailed to DCCU at "Hartsfield Airport, Atlanta, GA 30320," which was the address listed by the Debtor in her schedules.

On August 6, 2007, DCCU filed two proofs of claim. The first proof of claim evidenced a non-priority, unsecured claim in the amount of $23,121.44. The second proof of claim evidenced a secured claim in the amount of $22,137.63. On both claim forms, in the box captioned "Name and Address Where Notices Should be Sent," DCCU typed "Delta Community Credit Union, P.O. Box 20541, Atlanta, GA 30320-2541. Both proofs of claim were signed by Jack Feltman, Bankruptcy Specialist.

On September 21, 2007, the Debtor filed objections to both DCCU claims. The Debtor mailed a copy of the objections and notice of a hearing to be held on November 1, 2007 to Delta Community Credit Union, C/O Jack Feltman, P.O. Box 20541, Atlanta, GA 30320-2541. The Debtor's basis for objecting to the unsecured claim was that the documentation attached to the proof of claim evidenced a claim balance of $977, rather than the $23,121.44 amount stated on the proof of claim. The Debtor's basis for objecting to the secured claim was that the Debtor's chapter 13 plan provided for the surrender of the

collateral securing the debt, and DCCU had not amended its claim to reduce the amount to account for funds received from liquidating the collateral.

DCCU filed no response to the Debtor's objections and failed to appear at the hearing held on November 1, 2007. Accordingly, default orders were entered by the Court on November 9, 2007. The November 9th Orders disallowed DCCU's secured claim in its entirety and reduced DCCU's unsecured claim to $977.75. On January 15, 2008, DCCU filed the instant motion for reconsideration. In its Motion, DCCU asserts that the Debtor's basis for reducing DCCU's claim was not based in fact because the documents attached to its unsecured claim evidenced two loan balances that totaled $23,121.44. Additionally, DCCU acknowledged that it should have amended its proof of secured claim to reduce the balance to $5,236.45 and to reclassify that claim as unsecured in light of the subsequent surrender of the collateral. DCCU argues that it should be permitted to do so because it did not receive proper notice of the Debtor's objections to its claims. Specifically, DCCU states that the Debtor should have addressed the objections to Delta Community Credit Union, P.O. Box 20541, Atlanta, GA 30320-2541, rather than Delta Community Credit Union, C/O Jack Feltman, P.O. Box 20541, Atlanta, GA 30320-2541. DCCU submits that it did not receive actual notice of the claim objections because the objections were sent to the attention of Mr. Feltman, and Mr. Feltman no longer works for DCCU.

CONCLUSIONS OF LAW

Section 501(a) permits a creditor to file a proof of claim. 11 U.S.C. § 501. Rule 3001 provides that a proof of claim should be filed in writing, executed by the creditor or the creditor's authorized agent, and should be accompanied by any writing on which the claim is based and, if a secured claim, by evidence that the security interest has been perfected. *See* FED. R. BANKR. P. 3001. In a Chapter 13 case, the proof of claim must be filed with the clerk of the court in which the case is pending within ninety days after the first date set for a meeting of creditors. *See* FED. R. BANKR. P. 3002. Once filed, "[a] claim or interest . . . is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). The proof of claim executed and filed in accordance with these rules constitutes *prima facie* evidence of the validity and amount of the claim. *See* FED. R. BANKR. P. 3001(f). A party in interest may object to the claim and the court, after notice and a hearing, must determine the amount of the claim. *See* 11 U.S.C. § 502(b).

Under section 502(j), "[a] claim that has been allowed or disallowed may be reconsidered for cause." 11 U.S.C. § 502(j). "A reconsidered claim may be allowed or disallowed according to the equities of the case." *Id*. Reconsideration of a claim under section 502(j) is "a two-step process" that requires the court to first find the existence of "cause" and then to determine "whether the equities of the case dictate allowance or disallowance of the claim." *In re Durham*, 329 B.R. 899 (Bankr. M.D. Ga. 2005); *In re Clark*, 172 B.R. 701 (Bankr. S.D. Ga. 1994) (even when "cause" under Rule 60(b) exists to reconsider a claim, the court may decline to exercise the discretion to do so when the

equities do not favor reconsideration).

"To demonstrate cause under [section] 502(j), the movant must allege one of the . . . bases for reconsideration under . . . [Rule] 60(b)," which include "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment."[1] *Snyder v. Internal Revenue Service,* 68 F.3d 468 (5th Cir. 1998); *see also In re F/S Communications, Inc.,* 59 B.R. 824 (Bankr. N.D. Ga. 1986) (Drake, J.); *In re Tender Loving Care Health Care Services, Inc.*, 377 B.R. 798 (E.D.N.Y. 2007); *In re Genesis Health Ventures, Inc.*, 362 B.R. 657 (D. Del. 2007).[2]

In this case, DCCU asserts that the Court should reconsider the order disallowing and reducing its claims because DCCU never received notice of the objection and the hearing. This assertion can be construed as an argument that the judgment is void or, alternatively,

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[1] If the motion to reconsider is filed within the ten-day period for filing an appeal, the reconsideration may be granted under the lesser standard applied to motions filed under Rule 59. *See In re Wylie*, 349 B.R. 204 (9th Cir. BAP 2006). In this case, DCCU's motion for reconsideration was filed outside that ten-day period.

[2] The Court applies a different standard when the claim has been deemed allowed. *See In re Bernard*, 189 B.R. 1017 (Bankr. N.D. Ga. 1996) (Drake, J.); *In re Gomez*, 250 B.R. 397, 400 (Bankr. M.D. Fla. 1999).

that the default order disallowing the claim was entered as a result of DCCU's excusable neglect. *See In re Chess*, 268 B.R. 150 (Bankr. W.D. Tenn. 2001) ("Lack of notice and sufficient service of process leading ultimately to lack of due process properly renders a judgment void.").

Having considered the facts of the case, the Court finds that DCCU did receive sufficient notice of the objection and the hearing and, consequently, the Court concludes that the default order is not void. Pursuant to Rule 3007, "an objection to the allowance of a claim shall be in writing and filed with the court." FED. R. BANKR. P. 3007. "A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing." *Id*. The objection to a claim initiates a contested matter. *See In re Simmons*, 765 F.2d 547 (5th Cir. 1985); *see also* Advisory Committee Notes to Rule 3007.

There is a split of authority, however, as to whether service of the notice must be made in accordance with Rule 9014, which requires service "in the manner provided for service of a summons and complaint by Rule 7004." *Compare United States v. Filipovits*, 1996 WL 627412 (D. Md. Aug. 27, 1996) ("Because objections are considered 'contested matters' for the purposes of the Bankruptcy Code, Rule 3007 must be read in conjunction with Bankruptcy Rule 9014 which provides that '[t]he motion shall be served in the manner provided for service of a summons and complaint by Rule 7004.'"), *United States v. Oxylance Corp.,* 115 B.R. 380 (N.D. Ga. 1990) (objection to claim must be served in

accordance with Rule 7004), *In re Rushton*, 285 B.R. 76 (Bankr. S.D. Ga. 2002) (service improper where debtor did not mail objection to attention of an officer or agent), *and In re Boykin*, 246 B.R. 825 (Bankr. E.D. Va. 2000) (same), *with In re Hawthorne*, 326 B.R. 1 (Bankr. D. Colo. 2005) (mailing as provided in Rule 3007 is sufficient; claim objection need not be served in accordance with Rule 7004), *In re Anderson*, 330 B.R. 180 (Bankr. S.D. Tex. 2003) ("[T]he better analysis leads to the conclusion that mailing as required by Rule 3007 constitutes sufficient and proper service, and that service under Rule 7004 is not required."), *and In re Hensley*, 356 B.R. 68 (Bankr. D. Kan. 2006) (same). If service must be made in accordance with Rule 7004, and the respondent is a corporation, partnership, or other unincorporated association, Rule 7004(b)(3) would require mailing a copy of the objection to the attention of an officer, or to any other agent authorized by appointment or by law to receive service of process. *See* FED. R. BANKR. P. 7004(b)(3).[3]

In *In re Sunde*, 2007 WL 3275128 (Bankr. W.D. Wisc. Oct. 2, 2007), the bankruptcy court found that mailing a claim objection in accordance with Rule 3007 without perfecting service of process in accordance with Rule 7004(b)(3) was not sufficient. In that case, a creditor filed an unsecured claim, to which the debtor objected, and the creditor did not respond. Consequently, the court entered a default order denying the claim. The creditor

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[3] Even if service of a claim objection must be made in accordance with Rule 7004(b)(3), some courts have found that, by designating an address on the proof of claim form to which notices should be sent, the creditor is appointing an agent to receive service of process. *See Ms. Interpret v. Rawe Druck-und-Veredlungs-GmbH (In re Ms. Interpret)*, 222 B.R. 409 (Bankr. S.D.N.Y.1998).

filed a motion to vacate the order on the basis that the creditor did not receive proper service of process. On the creditor's proof of claim in the section captioned "Name and Address where notices should be sent," the creditor listed Glen E. Johnson Construction, 634 Commerce Drive Hudson, WI 54016-9178. The debtors mailed the objection to that address without directing the objection to a specific individual. When discussing whether service of the objection was proper, the court noted that the filing of a claim objection initiates a contested matter, and Rule 9014 requires service of a motion in accordance with Rule 7004, which in turn requires service to be made to the attention of a corporate officer. In response to the debtor's argument that Rule 7004(b)(3) was not applicable to a claim objection, which need only be mailed to the creditor as provided in Rule 3007, the court noted the distinction between "notice" and "service." It appears that the court adopted the view that service must be perfected in accordance with Rule 7004(b)(3) even if notice has been provided in accordance with Rule 3007 because compliance with Rule 7004(b)(3) is required in order for the court to acquire personal jurisdiction over the creditor. *See also In re Boykin*, 246 B.R. 825 (Bankr. E.D. Va. 2000) ("In this case, the debtor gave good *notice* to Marriott at the address listed on the proof of claim as required by Rule 2002, but did not *serve* the objection as required by Rules 9014 and 7004.").

The reasoning of *In re Hawthorne,* 326 B.R. 1 (Bankr. D. Colo. 2005), is more persuasive. Courts routinely recognize that the filing of a proof of claim is analogous to the filing of a complaint and that, by doing so, a creditor submits itself to the jurisdiction of the

court, at least with regard to the adjudication of its claim. If the creditor has voluntarily submitted itself to the jurisdiction of the court by filing a proof of claim, there is no need to be concerned that the failure to perfect service of process in accordance with Rule 7004(b)(3) has left the court without personal jurisdiction over the creditor for purposes of resolving the creditor's claim. Further, the specific language of Rule 9014 exempts an objection to claim from the requirement of service in accordance with Rule 7004. Rule 9014(a) states that "in a contested matter in a case under the Code *not otherwise governed by these rules*, relief shall be requested by motion . . . ," and Rule 9014(b) provides that a "*motion* shall be served in the manner provided for service of a summons and complaint by Rule 7004." FED. R. BANKR. P. 9014 (emphasis added). A claim objection is otherwise governed by Rule 3007 and is also not relief requested by motion. Accordingly, by its own terms, Rule 9014 does not apply to claim objections. *See In re Hawthorne*, 326 B.R. 1 (Bankr. D. Colo. 2005); *In re Anderson*, 330 B.R. 180 (Bankr. S.D. Tex. 2003).

This holding also comports with the Court's local rule. Pursuant to Bankruptcy Local Rule 3007-1, "[a]n objection to allowance of a claim for which a proof of claim has been filed, and notices with regard thereto, may be served on a creditor as its name appears on the proof of claim or transfer of claim." BLR 3007-1(b). "If served by mail, the mail shall be addressed to the person signing the proof of claim at the address shown thereon . . . ." *Id*. In addition, the rule requires service on an attorney if one has appeared in the case for the creditor and service in accordance with Rule 7004 if the creditor is a governmental

entity. *See id*.

In this case, the Debtor served DCCU as its name appeared on the proof of claim. In accordance with Bankruptcy Local Rule 3007-1, the Debtor served the motion and notice of the hearing by mailing it to the attention of the person signing the proof of claim. The Debtor was not required to serve DCCU in accordance with Rule 7004. Service in accordance with Rule 3007 and Bankruptcy Local Rule 3007-1 satisfies due process requirements as it provides 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." *In re Karbel*, 220 B.R. 108 (10th Cir. BAP 1998) (citing *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950)); *see also In re Chess*, 268 B.R. 150 (Bankr. W.D. Tenn. 2001) ("Costs and efficiency considerations must be balanced against the likelihood that parties receive actual notice. In bankruptcy cases and proceedings, the balancing test involves providing actual notice to parties in large volumes without being overly expensive or time-burdensome," and due process "does not require the very best means of serving process, only a means that is reasonably calculated to reach the party.").

The fact that the person who signed the proof of claim was no longer employed by DCCU does not require a finding that the notice was not "reasonably calculated" to notify DCCU of the Debtor's objections. DCCU does not dispute that the objections and notices of hearing were mailed to the proper address. Further, DCCU submitted no evidence that

its employees did not receive the objections and the notices of hearing. Therefore, the Court concludes that the default order was not void for lack of notice.

As noted above, however, the Court's conclusion that the default order is not void does not end the inquiry. The Court may reconsider a claim if it finds the existence of "excusable neglect." *See In re Tender Loving Care Health Care Services, Inc.*, 377 B.R. 798 (E.D.N.Y. 2007). Courts often distinguish between the application of the excusable neglect standard in cases in which the order entered foreclosed the consideration of the merits of a claim and those in which a party is seeking reconsideration of a ruling based on the merits. *See In re O.W. Hubbell & Sons, Inc*., 180 B.R. 31 (N.D.N.Y. 1995) (stating that "excusable neglect is generally liberally construed 'in those instances where the order or judgment forecloses trial on the merits of a claim,' . . . ; where, however, the purpose of the extension sought is to review the propriety of a decision on the merits, such as in the context of a late filed notice of appeal, the term excusable neglect must be strictly interpreted."). In this regard, it seems appropriate to consider the issue at hand in the same manner as the Court would consider a motion to set aside a default judgment. "In order to establish mistake, inadvertence, or excusable neglect, the defaulting party must show that: (1) it had a meritorious defense that might have affected the outcome; (2) granting the motion would not result in prejudice to the non-defaulting party; and (3) a good reason existed for failing to reply to the complaint." *Florida Physician's Ins. Co. v. Ehlers*, 8 F.3d 780, 783 (11th Cir. 1993) (citing *E.E.O.C. v. Mike Smith Pontiac GMC, Inc.,* 896 F.2d 524,

528 (11th Cir. 1990)).

As to the first factor, it is clear that DCCU has a meritorious defense to the disallowance of both claims. The Debtor objected to Claim Number 2, which was an unsecured claim for $23,121.44. In her objection, the Debtor stated that the claim contained supporting documentation that contradicted the amount of the claim. Specifically, the Debtor alleged that the claim included an attachment showing a balance of only $977.58. The Debtor made no other factual allegation to support a reduction in the claim amount. As DCCU points out, the claim attachment actually consisted of one business record indicating a payoff amount of $983.81 for Loan Number 0042 (overdraft protection) and a second business record indicating a payoff amount of $22,137.63 for Loan Number 0090 (Visa card). When added together, the two payoff amounts indicated by the documents attached to the proof of claim total the amount stated in Claim Number 2. Accordingly, it would appear that the Debtor did not have a valid basis for objecting to Claim Number 2 in the first instance and that DCCU had a clear defense to this objection. The Debtor also objected to Claim Number 3 on the basis that DCCU did not reduce the claim balance to account for the value of the liquidated collateral. Nonetheless, the claim was disallowed in its entirety, rather than reduced. During the hearing on the instant motion, DCCU's counsel proffered the fact that it did in fact liquidate the collateral and applied the amount received to the debt, but, nonetheless, a claim balance remains. This is a sufficient showing to persuade the Court that DCCU had a meritorious defense that may have prevented the

complete disallowance of Claim Number 3.

With regard to the second factor, in determining whether reconsideration of the default order disallowing DCCU's claim will prejudice the Debtor, the Court considers "whether the debtor was surprised or caught unaware by the assertion of a claim that it had not anticipated; whether the payment of the claim would force the return of amounts already paid out under [a] confirmed [p]lan or affect the distribution to creditors; whether payment of the claim would jeopardize the success of the debtor's reorganization; whether allowance of the claim would adversely impact the debtor actually or legally; and whether allowance of the claim would open the floodgates to other future claims." *In re Inacomp Corp*., 2004 WL 2283599 (D. Del. Oct. 4, 2004).

The facts of this case do not suggest that the Debtor would be prejudiced by the reconsideration of the order disallowing DCCU's claims. The Debtor was fully aware that DCCU asserted a claim against her for both a credit card debt and an overdraft checking account, as she scheduled two disputed claims in favor of DCCU. If the DCCU claims are reconsidered and are allowed in full or in part, the Debtor will be required to either increase her plan payment or amend her plan to provide for less than a 100% dividend to unsecured creditors. Statements made by the Debtor's counsel during the hearing indicate that the Debtor cannot increase her plan payments. Therefore, it is more likely that the Debtor's other unsecured creditors will receive less than the originally expected dividend. It appears that the Debtor's plan was amended prior to confirmation to provide for a 100% dividend

solely because the DCCU claims were disallowed. Allowing the DCCU claims in a lower amount would only restore the other unsecured creditors to the *status quo* (or better) that existed prior to the disallowance of the DCCU claims. Such a result does not seem unduly prejudicial to those creditors. Finally, there is little likelihood that allowance of the DCCU claims would result in other creditors being required to return funds to the estate or cause a "flood" of requests for reconsideration of previously disallowed claims.

As to the third factor, the standard of "excusable neglect" does not require a finding that DCCU's failure to act was the result of circumstances beyond its reasonable control. *See In re O'Brien Environmental Energy, Inc*., 188 F.3d 116 (3d Cir. 1999) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 395 (1993)). Excusable neglect encompasses "omissions caused by carelessness." *Id*. Nonetheless, the determination of whether such omissions are "excusable" is "an equitable determination that takes account of all relevant circumstances surrounding the . . . omission." *Id*. In conducting this equitable analysis, the Court considers whether DCCU had a good reason for failing to reply to the objection and whether DCCU acted in good faith.

DCCU's counsel stated that the reason for DCCU's failure to properly handle the claim objections was that the bankruptcy specialist to whom the objections and notices were addressed left the employ of DCCU. The implication from counsel's statement is that a DCCU employee received the hearing notices and objections and, because they were addressed to a former employee, did not properly route the correspondence to an individual

who would ensure that a response was filed. The Court accepts that the fact that the departure of the bankruptcy specialist and the resulting failure of the objection and notice to reach the right employee is a justifiable reason for DCCU's failure to respond or to appear at the hearing. *See Avon Contractors, Inc. v. Secretary of Labor*, 372 F.3d 171 (3d Cir. 2004). While the Court would expect that this error was rare and outside of the normal course of business for DCCU, DCCU presented no evidence to establish that it has any procedure in place to ensure that mail addressed to former employees is routed to an individual who can ensure proper handling of the correspondence. Nonetheless, having considered the totality of the circumstances, including the lack of any evidence or suggestion that DCCU has acted in bad faith in connection with the filing or disallowance of its claims, and recognizing that "defaults are seen with disfavor because of the strong policy of determining cases on their merits," the Court concludes that the equities of the case favor a finding that DCCU has established excusable neglect. For these reasons, the Court will reconsider the orders disallowing Claim Number 2 and Claim Number 3.

CONCLUSION

For the reasons stated above, DCCU's Motion to Reconsider is **GRANTED.** If the parties are prepared to stipulate as to the amount of either Claim Number 2 or Claim Number 3, they may file an agreed order on or before **June 20, 2008**. If the parties are not in agreement as to whether DCCU has valid unsecured claims and the amount of those

claims, the Court will hold an evidentiary hearing on **July 17, 2008 at 2:00 p.m**. in Second Floor Courtroom, 18 Greenville Street, Newnan, Georgia.

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