

1
2 UNITED STATES BANKRUPTCY COURT
3 EASTERN DISTRICT OF CALIFORNIA

4 In re:) Case No. 02-23700-D-13L
5 WILLIAM DOBSON and)
6 TRACY DOBSON,)
7 Debtors.)
8)
9 WILLIAM DOBSON and) Adv. Pro. No. 06-2024-D
10 TRACY DOBSON,) Docket Control No. JWC-1
11)
12 Plaintiffs,)
13 v.)
14 SMS FINANCIAL VII, L.L.C. (CK))
15 and U.S. BANK/FIRSTAR BANK,)
16 Defendants.)
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16 MEMORANDUM DECISION

17 On April 5, 2006, Defendant SMS Financial VII, L.L.C. (CK)
18 ("SMS"), filed a Motion for Summary Judgment, or in the
19 Alternative, Summary Adjudication, bearing Docket Control No.
20 JWC-1 (the "Motion"). For the reasons set forth below, the court
21 will grant summary judgment in favor of SMS.

22 I. INTRODUCTION

23 On April 3, 2002, William Dobson and Tracy Lynn Dobson (the
24 "Debtors") filed a joint petition for relief under chapter 13.
25 On the same date, the Debtors filed their Chapter 13 Plan
26 ("Plan"), attached to which was the Debtors' Motion to Value
27 Collateral, bearing Motion Control No. MWB-1 (the "Valuation
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1 Motion").¹ The Valuation Motion requested that the court value
2 the collateral of U.S. Bank, as the holder of a third deed of
3 trust (the "Deed of Trust") against the Debtors' residential real
4 property in Cottonwood, California (the "Residence"). The record
5 shows that U.S. Bank did not file opposition to confirmation of
6 the Plan or to the Valuation Motion.

7 U.S. Bank did, however, file a proof of claim in the
8 Debtors' case (the "Claim"). The court's claim register shows
9 that the Claim was timely filed on June 24, 2002,² in the amount
10 of \$30,856.28, as a fully secured claim. The full address listed
11 on the Claim is the following: "U.S. Bank/Firststar Bank,
12 Bankruptcy-Recovery Department, P.O. Box 5229, Cincinnati, OH,
13 45201-5229."

14 On July 23, 2002, the court entered an order that confirmed
15 the Plan (the "Confirmation Order"). The Confirmation Order
16 includes a provision as follows: "The claim of Class Two
17 Creditor, US Bank, shall be deemed unsecured pursuant to Motion
18 Control [No.] MWB-1, Motion to Value Collateral."

19 The Debtors did not file an objection to the Claim. The
20 Debtors obtained their discharge on July 19, 2005, and the Final
21 Decree was entered in the Debtors' case on July 27, 2005.

22 On the Debtors' motion, the chapter 13 case was later
23 reopened. On January 13, 2006, the Debtors initiated the above-
24 captioned adversary proceeding. In their Complaint to Determine

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26 1. Since the time the Debtors' case was filed, the term "Motion
27 Control Number" has been replaced by the term "Docket Control
Number."

28 2. The claims bar date in the Debtors' case for non-
governmental units was August 6, 2004.

1 Validity of Lien Against Property of the Estate [and] for
2 Injunctive Relief (the "Complaint"), the Debtors allege that SMS,
3 as U.S. Bank's assignee, refused the Debtors' demand that SMS
4 execute an instrument that would reconvey to the Debtors any
5 record interest that U.S. Bank might hold in the Residence. This
6 demand was apparently based on the Debtors' contention that the
7 Confirmation Order binds SMS, as the successor of U.S. Bank, to a
8 valuation for the Residence that made the Deed of Trust subject
9 to avoidance. See Complaint at ¶¶ 10, 11. The Complaint
10 requests that the court declare the Deed of Trust "invalid."

11 On February 13, 2006, SMS filed an answer to the Complaint.
12 The answer includes several affirmative defenses, including an
13 assertion that service of the Valuation Motion was ineffective.
14 SMS did not file any counterclaim pursuant to Federal Rule of
15 Bankruptcy Procedure 7013, for relief against the Debtors.

16 With the Motion, SMS filed a Declaration of Chris Kahler
17 ("Kahler Declaration"), a Request for Judicial Notice, and, as
18 required by Local Bankruptcy Rule 7056-1(a), a Statement of
19 Uncontroverted Facts. In the Motion, SMS requests two
20 alternative forms of relief: (a) for a judgment declaring that
21 service of the Valuation Motion was defective, that the court
22 lacked jurisdiction to enter the Confirmation Order, and that the
23 Valuation Motion fails on the merits, or (b) for a judgment
24 declaring that service of the Valuation Motion was defective,
25 that the court lacked jurisdiction to enter the Confirmation
26 Order, and that a triable issue of fact exists regarding the
27 value of the Residence as of the date the Debtors filed their

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1 chapter 13 petition. SMS has not moved the court to vacate or
2 set aside the Confirmation Order.

3 On April 18, 2006, the Debtors filed their Response to the
4 Motion (the "Response"), along with a Request for Judicial
5 Notice. The Debtors did not file their own Statement of Disputed
6 Facts or an itemized response to SMS's Statement of
7 Uncontroverted Facts, as set forth in Local Bankruptcy Rule 9056-
8 1(b). The Response includes a request that the court grant
9 summary judgment in favor of the Debtors. On May 2, 2006, the
10 Motion came before the court for hearing, counsel appeared, and
11 the matter was submitted.

12 SMS generally argues that because the Debtors failed to
13 serve the Valuation Motion in the manner required by applicable
14 rules, the court was without jurisdiction to enter an order that
15 would bind U.S. Bank to any valuation of its collateral, and that
16 the order does not bind SMS either, as U.S. Bank's assignee. SMS
17 further argues that the Debtors could have no legal basis for
18 recovery by way of the above-captioned adversary proceeding,
19 making appropriate summary judgment in favor of SMS.

20 The Debtors argue that U.S. Bank's filing of the Claim, some
21 thirty-four days before the court entered the order confirming
22 the Debtors' Plan, demonstrates "actual knowledge of the Chapter
23 13 bankruptcy filing" that binds SMS, as U.S. Bank's successor in
24 interest, to all terms of the Confirmation Order. Response at
25 3:17-22. The Debtors thus, without a counter-motion, requested
26 in the Response that summary judgment be entered in their favor.

27 Id. at 3:23-26

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1 pre-petition, to secure performance of the Debtors' obligations
2 to U.S. Bank, and that an employee of U.S. Bank timely filed the
3 Claim in the Debtors' bankruptcy case. As noted above, U.S. Bank
4 did not file a response to the Plan or to the Valuation Motion.
5 In support of the Motion, SMS also offered a copy of the Proof of
6 Service filed by the Debtors in connection with the Plan and the
7 Valuation Motion.

8 The proof of service for the Valuation Motion states that a
9 notification of the Plan and a copy of the Valuation Motion were
10 served on U.S. Bank by first-class mail on April 17, 2002, at the
11 following address, and no other: "US Bank, P.O. Box 790167, St.
12 Paul, MO 63179." SMS provided uncontested evidence that this
13 address was for a payment lock box for U.S. Bank. Kahler
14 Declaration ¶ 11.

15 SMS argues that service of the Valuation Motion was governed
16 by Federal Rule of Bankruptcy Procedure ("Rule") 7004,
17 specifically Rule 7004(h). With exceptions not relevant here,
18 Rule 7004 requires service of contested matters on insured
19 depository institutions like U.S. Bank "by certified mail
20 addressed to an officer of the institution."

21 Because the Debtors filed their chapter 13 petition on April
22 3, 2002, and because the Valuation Motion was filed before
23 General Order 03-03 became effective, General Order 01-02
24 governed service of the Plan and the Valuation Motion. General
25 Order 01-02 provides as follows:

26 If the debtor has included in the plan or otherwise
27 filed any . . . motions to value collateral . . . the
28 debtor or debtor's attorney shall serve the motions and
the plan . . . upon the respondent creditor(s) as

1 required by section 342(c), [Rule] 7004, and Local
2 Rules 2002-1 and 9014-1.

3 General Order 01-02 at ¶ 3(b).

4 The General Order thus expressly required that the Valuation
5 Motion and the Plan be served in accordance with Rule 7004, which
6 requires service on insured depository institutions by certified
7 mail, addressed to an officer. Service by first-class mail on a
8 payment lock box, as the Debtors served the Valuation Motion in
9 this case, clearly fails to meet the requirements of Rule 7004
10 for service on U.S. Bank.

11 Even in absence of the express directive in the General
12 Order, the court would find that service of the Valuation Motion
13 was defective under the circumstances of this case. This is
14 because service failed to meet Due Process requirements.

15 Rule 3012, which governs motions to value collateral under
16 section 506, does not expressly incorporate Rule 7004's service
17 requirements, as do certain other of the Rules. See, e.g. Fed.
18 R. Bankr. P. 4003 (stating that a motion to avoid a lien "shall
19 be by motion in accordance with Rule 9014," which rule requires
20 service under Rule 7004). At the same time, however, service
21 under Rule 3012, as under any rule, must satisfy the
22 constitutional Due Process requirements. In all cases, notice of
23 a judicial proceeding "must be reasonably calculated, under all
24 of the circumstances, to apprise interested parties of the
25 pendency of the action and to afford them an opportunity to
26 present their objections." In re Loloe, 241 B.R. 655, 660-61
27 (B.A.P. 9th Cir. 1999), citing Mullane v. Central Hanover Bank &
28 Trust Co., 339 U.S. 306 (1950). "[T]he practicalities in a given

1 case are a factor in determining whether constitutional
2 requirements have been satisfied." Levin v. Ruby Trading Corp.,
3 248 F. Supp. 537 (S.D.N.Y. 1965) (citing Mullane and other
4 cases).

5 The practicalities and circumstances of this case make
6 service by first-class mail, merely to U.S. Bank's payment lock
7 box in St. Paul, insufficient to satisfy U.S. Bank's Due Process
8 rights. First, the Valuation Motion undoubtedly arrived among
9 numerous payments and pieces of correspondence relating to
10 payments, rather than with service of other legal process being
11 handled by U.S. Bank. Second, even though the Valuation Motion
12 had the potential to cause significant impairment of the rights
13 that U.S. Bank asserted in the Claim, the Debtors did not direct
14 the Valuation Motion to a potentially responsible party at U.S.
15 Bank, by, for example, indicating in the address that it was
16 intended for review by an officer or managing agent of the
17 affected entity, or by serving the documents at U.S. Bank's
18 headquarters.

19 In addition, where notice is given of a proceeding that puts
20 a party's property rights at risk, the Rules require a stringent
21 level of notice: "Notice is to be taken particularly seriously
22 when liens are being affected in bankruptcy. Holders of liens
23 that may be adversely affected are entitled to unambiguous notice
24 and an adequate opportunity to reflect and respond". Loloee, 241
25 B.R. at 662 (form and timing of notice found deficient).

26 These circumstances, coupled with the practical fact that
27 detailed address and service information regarding major (and

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1 even minor) business entities all over the country is readily
2 available from various sources on the Internet, lead the court to
3 conclude that service of the Valuation Motion was not reasonably
4 calculated to apprise U.S. Bank of the pendency of the Valuation
5 Motion and to afford U.S. Bank an opportunity to present
6 objections. As such, service of the Valuation Motion was
7 deficient in meeting Due Process requirements, even had General
8 Order 01-02 not expressly required service according to Rule
9 7004.

10 Where service is not properly accomplished, the court is
11 without jurisdiction to enter a judgment or order against the
12 party not properly served. See In re Evans, 242 B.R. 407 (Bankr.
13 S.D. Ohio 1999) (adversary complaint under Fed. R. Bankr. P.
14 7004); Loloe, 241 B.R. at 661 ("If the notice is inadequate,
15 then the order is void." (citations omitted)); see also In re
16 Center Wholesale, Inc., 759 F.2d 1440, 1448-50 (9th Cir. 1985)
17 (finding a cash collateral order issued after hearing under Rule
18 4001 void, where notice of the hearing violated Due Process
19 because it was insufficiently particular and afforded
20 insufficient time for the affected party to respond).

21 The Debtors argue that the filing of the Claim by U.S. Bank
22 shows that it had actual knowledge of the bankruptcy case, and
23 therefore that U.S. Bank and its assignees should be bound to the
24 Debtors' valuation of the Residence. This argument is without
25 merit, first because knowledge of the chapter 13 case is not

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1 indicative of knowledge of the Valuation Motion.³ Second, even
2 receipt of actual notice of an action does not necessarily remedy
3 a technically defective service. See In re Van Meter, 175 B.R.
4 64, 68-69 (B.A.P. 9th Cir. 1994) (receipt of only unfiled copy of
5 complaint insufficient to create personal jurisdiction over
6 recipient, voiding default judgment).

7 Because service of the Valuation Motion was defective as to
8 U.S. Bank, the term of the Confirmation Order that purported to
9 value U.S. Bank's collateral (through a ruling on Motion Control
10 No. MWB-1), did not bind U.S. Bank. The Confirmation Order to
11 that extent also does not bind SMS, as the assignee of U.S. Bank.

12 In the Complaint, the Debtors ask the court to determine the
13 validity of the lien claimed by SMS, as U.S. Bank's assignee, and
14 also ask the court to grant injunctive relief against SMS.

15 Because the Confirmation Order, at least to the extent it valued
16 the collateral of U.S. Bank, did not bind U.S. Bank due to the
17 defective service of the Valuation Motion, and based on the
18 uncontested record that SMS has made in the matter of the Motion,
19 the court determines that uncontested material facts in this case
20 support a finding that the lien represented by the Deed of Trust
21 was not voided or otherwise impaired by the Confirmation Order.

22 Because of this, there are no grounds upon which the court might
23 presently grant the relief requested in the Complaint by the
24 Debtors, making summary judgment in favor of SMS appropriate.

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27 3. It is common for creditors to learn of bankruptcy cases
28 through periodic credit inquiries and similar activities, and to
respond with the filing of a proof of claim, rather than to learn of
the case through service of plan confirmation motions.

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III. CONCLUSION

For the reasons set forth above, the court will issue findings of fact and conclusions of law, an order granting the motion, and summary judgment in favor of SMS in this adversary proceeding.

Dated: June 9, 2006

/s/
ROBERT S. BARDWIL
United States Bankruptcy Judge