

ORDERED.

Dated: April 02, 2024


Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Case No. 2:23-bk-01158-FMD
Chapter 13

Cathleen Hann Wieder,

Debtor.

**ORDER GRANTING DEBTOR'S
MOTION FOR RECONSIDERATION OF
ORDER OVERRULING OBJECTION TO CLAIM NO. 1**

THIS CASE came on for hearing on December 21, 2023, at 2:15 p.m., on Debtor's *Motion for Reconsideration of Order Overruling Objection to Claim of Florida Central Credit Union, No. 1, for Improper Service* (the "Motion").¹ Upon consideration of the Motion, the record, and arguments of counsel, the Court finds as follows.

¹ Doc. No. 28.

A. Background

The facts are not in dispute. Florida Central Credit Union (the “Credit Union”) filed a proof of claim in Debtor’s Chapter 13 case (Claim No. 1). Debtor objected to the claim (the “Objection”).² The Objection included the “negative notice” legend authorized by Local Rule 2002-4. The negative notice legend informed the Credit Union that if it did not file a response within 30 days of the date of service of the Objection—plus an additional three days for mail—the Court would consider the Objection and would rule on it without a hearing. Debtor served the Objection on the Credit Union by first class mail to the Credit Union “Attn: Bankruptcy”; to the Credit Union’s agent for service of process; and to the person who signed Claim No. 1 on behalf of the Credit Union.

The Credit Union did not file a response to the Objection within the time permitted; however, the Court overruled the Objection because Debtor had not served it upon an officer of the Credit Union *by certified mail* in accordance with Federal Rule of Bankruptcy Procedure 7004(h) (the “Order Overruling Objection”).³

In her Motion, Debtor requests that the Court reconsider its Order Overruling Objection on the grounds that (1) Debtor properly served the Objection, and (2) credit

² Doc. No. 26.

³ Doc. No. 27.

unions—even insured credit unions—are not entitled to Rule 7004(h)'s heightened service requirements. The Credit Union has not opposed Debtor's Motion.

B. Analysis

A motion for reconsideration is appropriate when the court has made a manifest error of law or fact. "Reconsideration of an order under Rule 59(e) is an extraordinary remedy to be granted sparingly because of the interest in the finality of orders and the conservation of judicial resources. In the Eleventh Circuit, the only grounds for granting a motion for reconsideration under Rule 59(e) are newly discovered evidence or manifest errors of law or fact."⁴

Federal Rule of Bankruptcy Procedure 3007(a)(2)(A) authorizes service of objections to claims on the claimant "by first-class mail to the person most recently designated on the . . . proof of claim as the person to receive notices, at the address so indicated." Until December 2021, Rule 3007(a)(2)(A)(ii) stated that "if [an] objection is to a claim of an *insured depository institution*," then the objection must be served "in the manner provided by Rule 7004(h)."⁵

Rule 7004(h), with three exceptions not relevant here, requires service of process in a contested matter or adversary proceeding on an "insured depository

⁴ *In re Myers*, 2022 WL 2827475, at *2 (Bankr. M.D. Fla. July 15, 2022) (citing *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007)).

⁵ Fed. R. Bankr. P. 3007(a)(2)(A)(ii) (2020) (emphasis added).

institution (as defined in section 3 of the Federal Deposit Insurance Act)” be made by certified mail to an officer of the institution.

Over the years, courts have differed on the issue of whether a credit union is an “insured depository institution” entitled to service by certified mail under Rule 7004(h). For example, two bankruptcy courts—in *In re Drobney*⁶ and *In re Fisher*⁷—held that the service requirement of Rule 7004(h) applies to credit unions. A third bankruptcy court—in *In re Cornejo*—held that Rule 7004(h) does not apply to credit unions, because it only applies to “insured depository institution[s] (*as defined in section 3 of the Federal Deposit Insurance Act*),” and credit unions are not insured under section 3 of the Federal Deposit Insurance Act.⁸

Fortunately, this issue was resolved in December 2021, when Rule 3007(a)(2)(A)(ii) was amended to clarify that claims objections are required to be served under Rule 7004(h) only “if the objection is to a claim of an insured depository institution *as defined in section 3 of the Federal Deposit Insurance Act.*”⁹ The Advisory Committee notes to the amendment explain that the phrase “as defined in section 3 of the Federal Deposit Insurance Act” was added to clarify that the heightened service requirement of Rule 3007(a)(2)(A)(ii) does not apply to credit unions:

⁶ 583 B.R. 700, 702 (Bankr. W.D. Mich. 2018).

⁷ 2008 WL 4280388, *2 (Bankr. N.D. Ala. Sept. 12, 2008).

⁸ 2010 WL 7892449, at *1 (Bankr. D. Alaska Aug. 2, 2010) (emphasis added).

⁹ Fed. R. Bankr. P. 3007(a)(2)(A)(ii) (2022).

Subdivision (a)(2)(A)(ii) is amended to clarify that the special service method required by Rule 7004(h) must be used for service of objections to claims only on insured depository institutions as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813. Rule 7004(h) was enacted by Congress as part of the Bankruptcy Reform Act of 1994. *It applies only to insured depository institutions that are insured by the Federal Deposit Insurance Corporation and does not include credit unions, which are instead insured by the National Credit Union Administration.* A credit union, therefore, may be served with an objection to a claim according to Rule 3007(a)(2)(A) – by first-class mail sent to the person designated for receipt of notice on the credit union’s proof of claim.¹⁰

Given the amendment to Rule 3007(a)(2)(A)(ii), and the Advisory Committee’s Note, it is now clear that credit unions are not entitled to the heightened service of Rule 7004(h), and an objection to a claim filed by a credit union may be served by first-class mail upon the person most recently designated on its proof of claim.

Therefore, the Court concludes that it should not have overruled the Objection and will grant the Motion and sustain Debtor’s Objection to the Proof of Claim.

Accordingly, it is

ORDERED:

1. Debtor’s Motion (Doc. No. 28) is GRANTED. The Court’s Order Overruling Objection (Doc. No. 27) is VACATED.
2. Debtor’s Objection to Claim No. 1 (Doc. No. 26) is SUSTAINED.

¹⁰ *Id.* advisory committee’s note to 2021 amendment (emphasis added).

3. Claim No. 1, filed by Florida Central Credit Union, is disallowed.

Attorney David Fineman is directed to serve a copy of this Order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this Order.