

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In the Matter of: : Chapter 13
: :
KENNETH R. STEMBRIDGE, : :
: :
Debtor : Case No. 00-51228 RFH
: :
STA-RITE INDUSTRIES, INC., : :
ITS SUCCESSORS IN INTEREST : :
OR ASSIGNS, : :
: :
Movant : :
: :
vs. : :
: :
KENNETH R. STEMBRIDGE, : :
: :
Respondent :

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Movant: MOLLY L. McCOLLUM
560 First Street
Macon, Georgia 31201

For Respondent: WILLIAM D. NESMITH, III
Post Office Box 488
Americus, Georgia 31709

The Chapter 13 Trustee: CAMILLE HOPE
Post Office Box 954
Macon, Georgia 31202

MEMORANDUM OPINION

Sta-Rite Industries, Inc., Its Successors in Interest or Assigns, Movant, filed on August 28, 2000, its Motion to Set Aside Order Sustaining Objection to Claim of Sta-Rite Industries. A hearing was held on September 18, 2000. The Court, having considered the arguments of counsel and the applicable law, now publishes this memorandum opinion.

Kenneth R. Stenbridge, Respondent, filed on April 3, 2000, a petition under Chapter 13 of the Bankruptcy Code. Movant filed on April 17, 2000, a proof of claim asserting an unsecured claim of \$106,883.06. Movant's proof of claim provided, in part, as follows:

Name and Address Where Notices Should be Sent

STA-RITE INDUSTRIES, INC.
175 WRIGHT STREET
DELAVAN, WI 53115
ATTN: CREDIT DEPARTMENT

Telephone No. 262-728-7368

Respondent served by mail his Objection to Proof of Claim on June 9, 2000, at the address provided in Movant's proof of claim. Respondent filed his objection with the Court on June 12, 2000. Respondent filed with the Court on June 16, 2000, an undated "notice"¹ advising that Movant's response to

¹ This notice is required by the federal and local rules of bankruptcy procedure. Fed. R. Bankr. P. 3007; M.D. Ga. LBR 3007-1(d).

the objection must be filed on or before July 6, 2000.² The record does not show whether the notice was served on Movant.

Movant did not file a response to Respondent's objection. The Court entered an order on July 28, 2000, disallowing Movant's claim due to Movant's failure to respond.

Movant filed on August 28, 2000, a motion to set aside the Court's order disallowing its claim.³ Movant contends that Respondent failed to properly serve his objection and that Movant did not receive the objection.

The Court notes that the notice prepared by Respondent was undated, provided an erroneous response date, and has no certificate of service. The Court questions whether Movant was obligated to respond to Respondent's notice. Having made that observation, the Court will now

² Respondent's notice advised that Movant's response was due 27 days after Respondent served its objection. Movant was entitled to at least 30 days to respond. Fed. R. Bankr. P. 3007; M.D. Ga. LBR 3007-1(a) and (d).

³ See Fed. R. Bankr. P. 3008; 9024.

decide whether Respondent properly served his objection on Movant.

Rule 3007 of the Federal Rules of Bankruptcy Procedure provides as follows:

Rule 3007. Objections to Claims

An objection to the allowance of a claim shall be in writing and filed. 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. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

Fed. R. Bankr. P. 3007.

An objection to the allowance of a claim is a contested matter governed by Rule 9014.⁴ Fed. R. Bankr. P. 3007 (Advisory Committee Note); Fed. R. Bankr. P. 9014 (Advisory Committee Note); Fairchild v. Internal Revenue Service of United States (In re Fairchild), 969 F.2d 866, 868 (10th Cir. 1992).

Most courts that have considered the issue have held that Rule 9014 requires that an objection to claim must be served in the manner provided by Rule 7004 for service of a summons and complaint. See Boykin v. Marriott International, Inc. (In re Boykin), 246 B.R. 825 (Bankr. E.D. Va. 2000);

⁴ An objection to claim becomes an adversary proceeding if a demand for relief under Rule 7001 is joined with the objection.

United States v. Levoy (In re Levoy), 182 B.R. 827 (9th BAP 1995); In re Schweitzer, 145 B.R. 292 (Bankr. E.D. Ark. 1992); United States v. Oxyllance Corp., 115 B.R. 380 (N.D. Ga. 1990); In re Morrell, 69 B.R. 147 (N.D. Cal. 1986).

Rule 7004 provides, in part, that service upon a corporation may be made by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or any agent authorized by appointment or by law to receive service of process, for the corporation. Fed. R. Bankr. P. 7004(b)(3), (7), (8). See also Fed. R. Civ. P. 4(h)(1); O.C.G.A. 9-11-4(e) (Supp. 2000). "Service on a corporate employee is not sufficient." In re Boykin, 246 B.R. at 828.

It is undisputed that Respondent did not mail his objection to the attention of an officer or an agent of Movant. The Court can only conclude that Movant was not properly served with Respondent's objection and that Movant was not obligated to file a response.

Respondent's counsel states that he may have talked with Movant's counsel⁵ concerning Respondent's objection to claim. Actual knowledge of litigation, however, is generally insufficient to satisfy the requirements for valid service of process. See Mid-Continent Wood Products, Inc. v. Harris, 936 F.2d 297, 301 (7th Cir. 1991); Way v. Mueller Brass Co., 840 F.2d 303, 306 (5th Cir. 1988); Sieg v. Karnes, 693 F.2d 803, 807 (8th Cir. 1982); Martin v. New York State Dept. of Mental Hygiene, 588 F.2d 371, 373 (2d Cir. 1978).

Rule 2002(g) of the Federal Rules of Bankruptcy Procedure provides that certain notices shall be mailed to the creditor's address stated in a duly filed proof of claim. Rule 2002(g), however, does not apply to an objection to claim which must be served as required by Rules 9014 and 7004. In re Boykin, 246 B.R. at 828-29.

Movant, by filing a proof of claim, subjected itself to the Court's equitable power to disallow its claim. Granfinanciera v. Nordberg, 492 U.S. 33, 109 S. Ct. 2782, 2798-2799 and n. 14, 106 L. Ed. 2d 26 (1989); Langenkamp v. Culp, 498 U.S. 42, 111 S. Ct. 330, 331, 112 L. Ed. 2d 343 (1990). But an order sustaining an objection and disallowing a claim is void where there has been defective service. See In re Levoy, 182 B.R. at 833.

⁵ Movant is now represented by other counsel.

An order in accordance with this memorandum opinion
will be entered this date.

DATED the 5th day of October, 2000.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

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KENNETH R. STEMBRIDGE,	:	
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Debtor	:	Case No. 00-51228 RFH
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STA-RITE INDUSTRIES, INC.,	:	
ITS SUCCESSORS IN INTEREST	:	
OR ASSIGNS,	:	
	:	
Movant	:	
	:	
vs.	:	
	:	
KENNETH R. STEMBRIDGE,	:	
	:	
Respondent	:	

ORDER

In accordance with the memorandum opinion entered
this date; it is

ORDERED that the Motion to Set Aside Order
Sustaining Objection to Claim of Sta-Rite Industries filed on
the 28th day of August, 2000, by Sta-Rite Industries, Inc.,
Its Successors in Interest or Assigns, Movant, hereby is
granted; and it is further

ORDERED that the Order Sustaining Debtor's Objection of Claim of Sta-Rite Industries entered by this Court on the 28th day of July, 2000, hereby is vacated and set aside; and it is further

ORDERED that the Court directs Kenneth R. Stembridge, Respondent, to properly serve his Objection to Proof of Claim on Movant.

SO ORDERED this 5th day of October, 2000.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court

CERTIFICATE OF SERVICE

I, Carolyn Hubbard, certify that a copy of the attached and foregoing was mailed to the following:

Ms. Molly L. McCollum
Attorney at Law
560 First Street
Macon, GA 31201

Mr. William D. NeSmith, III
Attorney at Law
Post Office Box 488
Americus, GA 31709

Ms. Camille Hope
Chapter 13 Trustee
Post Office Box 954
Macon, GA 31202

This 5th day of October, 2000.

Carolyn Hubbard
Deputy Clerk
United States Bankruptcy Court