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U.S. BANKRUPTCY COURT
NEWARK, N.J.
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In Re: MORAIMA MEDINA, Debtor.	Case No.: 15-30083 (JKS)
	Chapter: 13
	Judge: Hon. John K. Sherwood

DECISION AND ORDER RE: RESURGENT CAPITAL SERVICES, L.P.'S MOTION FOR RECONSIDERATION

The relief set forth on the following pages, numbered two (2) through six (6), is hereby **ORDERED**.

5/25/17

INTRODUCTION

Moraima Medina ("Debtor") filed a Chapter 13 petition on October 26, 2015. Thereafter, Resurgent Capital Services, L.P. as Servicing Agent for LVNV Funding, LLC ("Resurgent") filed an unsecured proof of claim totaling $1,711.65.[1] Unable to recollect owing money to Resurgent, the Debtor filed a motion to disallow the claim.[2] No opposition to the motion was ever filed and the Court entered an Order disallowing Resurgent's claim.[3] More than two months later, Resurgent filed a motion requesting that the Court reconsider its Order disallowing the claim.[4] The crux of Resurgent's argument is that it never received notice of the Debtor's motion and therefore is entitled to relief from the Order. The Debtor opposes the motion and claims Resurgent was properly served with the original motion, never responded, and has failed to establish cause to reinstate the claim.

For the reasons discussed below, Resurgent's motion for reconsideration is granted.

JURISDICTION

The Court has jurisdiction over the motion pursuant to 28 U.S.C. §§ 1334(b), 157(a), and the Standing Order of Reference from the United States District Court for the District of New Jersey. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B). Venue is proper under 28 U.S.C. § 1408.

[1] Claims Register [Claim No. 13-1].
[2] Motion to Modify Claim of Resurgent [ECF No. 64]. (The Debtor lists the claim of Resurgent as "disputed" on her Schedule "F").
[3] Order Granting Motion to Modify Claim of Resurgent [ECF No. 95].
[4] Motion to Reconsider Order Granting Motion to Modify Claim of Resurgent [ECF No. 109].

RELEVANT FACTS AND PROCEDURAL HISTORY

On February 24, 2016, Resurgent filed its claim for $1,711.65. On November 15, 2016, the Debtor filed her motion to disallow the claim.[5] No response was filed and on January 19, 2017, the Court entered an Order disallowing the claim.[6] On January 23, 2017, the Debtor filed a certification of service of the Order disallowing the claim upon Resurgent.[7] On April 5, 2017, Resurgent filed this motion for reconsideration.[8]

LEGAL ANALYSIS

Bankruptcy Rule 3007(a) governs objections to a proof of claim and provides in pertinent part that "[a] copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant…at least 30 days prior to the hearing." Rule 9001(8) defines service of notice by mail as "first class, postage prepaid." A proof of claim filed by a creditor that designates a mailing address "constitutes a filed request to mail notices to that address" under Rule 2002(g)(1)(A).

It is well settled that if a letter "properly directed is proved to have been either put into the post-office or delivered to the postman, it is presumed…that it reached its destination at the regular time, and was received by the person to whom it was addressed."[9] This presumption of delivery is "based on the historic efficiency of the United States Postal Service [because] letters will be timely delivered to the addressee when properly mailed."[10] Courts have held that a certification

[5] Motion to Modify Claim of Resurgent [ECF No. 64].
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[7] [ECF No. 99].
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[9] *Lupyan v. Corinthian Colleges, Inc.*, 761 F.3d 314, 319 (3d Cir. 2014) (quoting *Rosenthal v. Walker*, 111 U.S. 185, 193 (1884)).
[10] *Id.* at 321-22 (quoting *Rosenthal v. Walker*, 111 U.S. at 193).

of service "is sufficient evidentiary material to raise the presumption of receipt after proper mailing."[11]

The presumption of mailing and timely receipt is rebuttable, however, because "human experience has shown that [reliance upon the United States Postal Service] has not always been justified."[12] In some instances, "testimony denying receipt suffices to rebut the presumption."[13] When the intended recipient of a letter is a commercial entity, it may be routine business practice to scan and log inbound mail. In such cases, "the absence of an entry in a mail log near the time that mail would likely have arrived, can be used to establish that mail was not received."[14] The introduction of evidence to rebut a presumption "destroys that presumption, leaving only that evidence and its inferences to be judged against the competing evidence and its inferences to determine the ultimate question at issue."[15]

The Debtor filed the motion to disallow Resurgent's claim more than 30 days before the hearing, as required by Rule 3007(a).[16] Resurgent's claim directs parties to send notices to its address at P.O. Box 10587, Greenville, South Carolina 29603. A certification of service under penalty of perjury was executed by Nadia Loftin ("Loftin"), a paralegal for Debtor's counsel, stating that notice was sent to Resurgent at the address set forth in its claim.[17] This certification of service is sufficient to raise the presumption that the Debtor mailed notice of the motion to disallow Resurgent's claim.

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[11] *In re Greenberg*, 526 B.R. 101, 105 (Bankr. E.D.N.Y. 2015) (quoting *In re Bernard L. Madoff Inv. Sec. LLC*, 2014 WL 1302660, at *4) (internal brackets omitted).
[12] *In re Cendant Corp. Prides Litigation*, 311 F.3d 298, 304 (3d Cir. 2002).
[13] *Id.* (citing *In re The Yoder Co.*, 758 F.2d 993, 996 (5th Cir. 1989)).
[14] *Lupyan v. Corinthian Colleges, Inc.*, 761 F.3d at 322 (citing *United States v. Dawson*, 608 F.2d 1038, 1040 (5th Cir. 1979)).
[15] *McCann v. Newman Irrevocable Trust*, 458 F.3d at 287-88 (quoting *McKenna v. Pac. Rail. Serv.*, 32 F.3d 820, 829-30 (3d Cir. 1994)).
[16] Motion to Modify Claim of Resurgent [ECF No. 64].
[17] *Id.*

In support of its motion to reconsider, Resurgent includes the affidavit of Joel A. Davis ("Davis"), the Senior Manager of the Objections Department for Resurgent. Davis explains that Resurgent has stringent procedures for its receipt of bankruptcy notices and employs a total of 12 people to open, sort and scan every document into Resurgent's document management system known as "OnBase."[18] As part of the scan process, these employees upload information relating to the notice, such as the date received and response due date. Davis claims that Resurgent never received notice of the Debtor's motion because if it had, there would be a record of it in "OnBase" and a response would have been filed. Resurgent first became aware of the motion only after the Order disallowing the claim had been entered. Davis's affidavit is sufficient to rebut the presumption of mailing.

Resurgent moves for reconsideration of the Order expunging its claim pursuant to section 502(j) of the Bankruptcy Code, which governs the allowance of claims and provides that a movant must show cause for reconsideration of an order disallowing a claim based on the "equities of the case." Courts have found that an application for reconsideration of an order expunging a claim may be granted under Rule 9024 if the moving party demonstrates that its failure to respond was due to "excusable neglect."[19] Excusable neglect is not defined by the Bankruptcy Code or Rules. However, the Supreme Court has said that the determination is an equitable one, requiring a review of: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant, and; (4) whether the movant acted in good faith.[20]

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[18] Affidavit of Joel A. Davis [ECF No. 109].
[19] *In re JWP Information Services, Inc.*, 231 B.R. 209, 211 (Bankr. S.D.N.Y. 1999) (citing *In re Colonial Realty Co.*, 202 B.R. 185, 187 (Bankr. D. Conn. 1996)).
[20] *In re Cendant Corp. PRIDES Litigation,* 235 F.3d 176, 182 (3d Cir. 2000) (citing *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership,* 507 U.S. 380, 395 (1993)).

Resurgent has rebutted the presumption that it received notice of the motion to disallow its claim. The length of delay by Resurgent had little impact on this bankruptcy proceeding and it acted in good faith by moving within a reasonable time for reconsideration of the Order after it became aware that its claim had been disallowed. Any prejudice to the Debtor is minimal because she scheduled the claim in her petition and Resurgent has provided evidence of what appears to be a valid debt owed by the Debtor. Therefore, Resurgent has sufficiently demonstrated that its failure to oppose the Debtor's motion was due to excusable neglect.[21] The Court will revoke the Order disallowing the claim and allow Resurgent an opportunity to respond to the Debtor's original motion.

CONCLUSION

For the foregoing reasons, Resurgent's motion for reconsideration is granted. Resurgent will have 10 days from the date of entry of this Order to file a response to the Debtor's motion and a hearing will be held on June 13, 2017 at 10:00 am.

[21] Although the Debtor argues that Rule 8002(a)'s 14-day timeframe to bring this motion is applicable, the Court holds that Rule 9024 is controlling because it specifies that a motion to reconsider an order entered where the original motion was uncontested is not subject to the one-year limitation imposed by Fed. R. Civ. P. 60(c). It would be nonsensical to find that a motion for reconsideration of an order disallowing a claim must be brought within the 14 days prescribed by Rule 8002(a) when Rule 9024 makes clear that it may be brought more than a year later if the original motion was uncontested and excusable neglect is found.