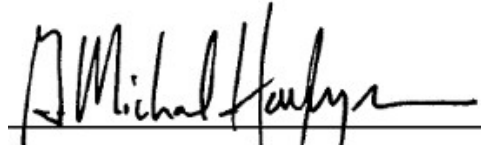


THE FOLLOWING ORDER  
IS APPROVED AND ENTERED  
AS THE ORDER OF THIS COURT:



DATED: July 23, 2018

  
G. Michael Halfenger  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

---

In the matter:

David Paul Ryan, and  
Jean Marie Ryan,

Case No. 18-20366-gmh

Debtors.

Chapter 13

---

**ORDER OVERRULING DEBTORS' OBJECTIONS TO  
PROOFS OF CLAIM NUMBERS 12 AND 13**

---

On July 3, 2018, the debtors filed objections to proofs of claim numbers 12 and 13 on the basis that the properties securing the debts are not owned by the individual debtors, but by two LLCs. Both claims 12 and 13 were filed by Waterstone Bank. Claim number 12 is a secured claim for real property located at 8641 W. Capital Drive, Milwaukee, Wisconsin; and claim number 13 is a secured claim for real property located at 1000-1018 W. Pierce Street, Milwaukee, Wisconsin.

I

The debtors did not properly serve their objections to Waterstone Bank's claims. Under the bankruptcy rules, an objection to claim "shall be served on a claimant by first-class mail to

the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; **and** . . . if the objection is to a claim of an insured depository institution, in the manner provided by Rule 7004(h)." Fed. R. Bankr. P.

3007(a)(2)(A)(ii) (emphasis added). Bankruptcy Rule 7004(h) requires:

Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) . . . shall be made **by certified mail** addressed to an officer of the institution unless—

- (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
- (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
- (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Fed. R. Bankr. P. 7004(h) (emphasis added). Section 3 of the Federal Deposit Insurance Act

("FDIA") defines an "Insured depository institution" as "any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter." 12 U.S.C.

§1813(c)(2). The "Corporation" is the Federal Deposit Insurance Corporation or FDIC. 12 U.S.C.

§1811(a). Therefore, any bank or savings association whose deposits are insured by the FDIC is an "insured depository institution" for purposes of the service rules under Fed. R. Bankr. P.

7004(h). And a search on the FDIC's website reveals that Waterstone Bank is an insured

depository institution under the FDIA. See <https://research.fdic.gov/bankfind/>

results.html?name=WATERSTONE+BANK%2C+SSB&fdic=&address=&city=&state=&zip=&bankUrl=.

So, Bankruptcy Rule 3007 requires the debtors to serve Waterstone Bank both by first-class mail to its designee and by certified mail to one of its officers. The debtors, however, used

first-class mail to serve the claim objections on an officer of Waterstone Bank. The debtors have not argued, and the record does not establish, that any exceptions to the certified-mail requirement in Fed. R. Bankr. P. 7004(h) apply. Therefore, service of the claim objections on Waterstone Bank was improper.

## II

The debtors' claim objections also do not comply with Local Rule 3007(b). "A claim objection must be supported by one or more Affidavits or declarations stating facts in support of the objection made by individuals with personal knowledge of those facts." Bankr. E.D. Wis. L.R. 3007(b).

The debtors' only support for their objections are affidavits of the debtors' attorney, Paul Strouse. In the affidavit supporting the objection to Waterstone Bank's claim number 12, Mr. Strouse "assert[s] that all documents that Creditor [Waterstone Bank] attached to their proof of claim number 12 evidence that the property is owned by the entity 'Ryan 8641, LLC,' and not the above aforementioned debtors." CM-ECF, 18-20366, Doc. No. 52-1. Similarly, Mr. Strouse's affidavit in support of the objection to claim number 13 "assert[s] that all documents that Creditor [Waterstone Bank] attached to their proof of claim number 13 evidence that the property is owned by the entity 'Ryan 1000, LLC,' and not the above aforementioned debtors." CM-ECF, Doc. No. 51-1. If Waterstone Bank's claims were self-defeating because they showed Waterstone Bank has no claim against the debtor, Mr. Strouse's affidavits would be unnecessary. See Bankr. E.D. L.R. 3007(b) (claim objection need not be supported by affidavit or declaration if "the objection rests solely on the application of law to facts of which the court can take judicial notice (e.g., the claim was filed late)").

But the mortgage notes, mortgages, and tax bill that accompany claims are insufficient to overcome the presumption that the claims are proper. Even if two corporate entities had originally owed Waterstone Bank the debts asserted in the proofs of claim, the documents accompanying those claims do not foreclose the possibility that those entities transferred the encumbered properties to the debtors before the debtors filed their bankruptcy petition.

And Mr. Strouse's "supporting" affidavits fail to show that the debtors do not own the properties that secure the claims, because, among other things, those affidavits do not establish that that the debtors' lawyer, Mr. Strouse, has personal knowledge of the relevant facts. The debtors presumably have relevant personal knowledge of whether they or their property is liable for the claims asserted by Waterstone Bank, but the debtors have not executed and filed supporting affidavits or declarations.

Accordingly, the debtors' objections to claims 12 and 13 filed by Waterstone Bank are **overruled** for lack of proper service and for otherwise failing to comply with Local Rule 3007.

#####