

Dated: April 07, 2023

The following is ORDERED:
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
Western Division



In re

ROGER DALE MORGAN,
Debtor.

Case No. 10-50687
Chapter 7
Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

ROGER DALE MORGAN,
Plaintiff.

vs.

Adv. Proc. No. 22-00065

**UNITED STATES DEPARTMENT
OF EDUCATION,**
Defendant.

**ORDER AND OPINION DIRECTING DEBTOR-PLAINTIFF TO
CORRECT SERVICE OF PROCESS OF THIRD AMENDED COMPLAINT**

This adversary proceeding came before the Court for a hearing on March 28, 2023, on Roger Dale Morgan's *Third Amended Complaint*. Upon review of the record, filed documents, and consideration of the argument from Mr. Morgan the Court finds that the *Third Amended Complaint* was improperly served on the United States Department of Education.

BACKGROUND

Mr. Morgan, represented by counsel at the time, filed a voluntary petition under Chapter 7 of the Bankruptcy Code on October 1, 2010.¹ Mr. Morgan received a discharge on March 8, 2011, and his case was closed.²

On February 21, 2014, Mr. Morgan, through counsel, filed a motion to reopen to determine student loan dischargeability.³ On March 26, 2014, Mr. Morgan commenced an

adversary proceeding against a different party, ACS Student Loans.⁴ This adversary proceeding was dismissed without prejudice.⁵ Mr. Morgan's Chapter 7 case was re-closed on November 24, 2015.⁶

On March 15, 2022, Mr. Morgan, proceeding *pro se*, filed a motion to reopen this Chapter 7 case for the second time, to determine dischargeability of his outstanding student loans.⁷

On June 17, 2022, Mr. Morgan filed a Complaint to determine dischargeability of his student loan debt.⁸

On August 3, 2022, Nelnet filed a Motion to Dismiss for improper service and improper party.⁹

¹ See 10-30689, ECF No. 1.

² See 10-30689, ECF No. 39.

³ See 10-30689, ECF No. 44.

⁴ See 10-30689, ECF No. 47.

⁵ See Adv. Proc. No. 14-00097, ECF No. 23.

⁶ See 10-30689, ECF No. 48.

⁷ See 10-30689, ECF No. 50.

⁸ Adv. Proc. EFC No. 1.

This Court granted Nelnet’s Motion to Dismiss and instructed Mr. Morgan to file an amended complaint and to serve the proper party in this cause.¹⁰

On October 24, 2022, Mr. Morgan filed an amended Complaint, listing Nelnet as the party.¹¹ Nelnet filed a Motion to Dismiss Mr. Morgan’s Amended Complaint, alleging again that is it not the proper party.¹²

On December 15, 2022, Mr. Morgan filed a Second Amended Complaint, again listing Nelnet as the defendant and in parentheses stating, “now addressed to the United States Department of Education.”¹³

At the hearing on December 20, 2022, the Court granted Nelnet’s motion and dismissed Mr. Morgan’s Second Amended Complaint without prejudice and instructed him to serve the appropriate defendant and to properly serve that defendant.¹⁴

On January 11, 2023, Mr. Morgan filed a *Third Amended Complaint*, now listing the United States Department of Education as the defendant.¹⁵ This Court held a hearing on March 28, 2023.

⁹ Adv. Proc. EFC No. 4.

¹⁰ Adv. Proc. EFC No. 8.

¹¹ Adv. Proc. EFC No. 10.

¹² Adv. Proc. EFC No. 13.

¹³ Adv. Proc. EFC No. 16.

¹⁴ Adv. Proc. EFC No. 19.

¹⁵ Adv. Proc. EFC No. 21.

On March 30, 2023, the Court issued an *Alias Summons*, with a new pretrial conference date and time.¹⁶

DISCUSSION

Under Bankruptcy Rule 7004(b)(4) and (5),¹⁷ when serving an agency of the United States, service must be perfected by mailing a copy of the summons and complaint (1) to the civil process clerk at the office of the United States Attorney for the district in which the action is brought, (2) to the office of the United States Attorney in Washington, D.C, and (3) to the officer or agency.¹⁸

Here, Mr. Morgan mailed his Complaint and summons to the “Department of Education at 400 Maryland Avenue SW, Washington, DC 20202,” but he did not mail any other government

¹⁶ Adv. Proc. EFC No. 24.

¹⁷ Bankruptcy Rule 7004(b)(4) states: “Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.”

Bankruptcy Rule 7004(b)(5) adds: “Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.”

¹⁸ See also *Pope v. U.S. Dept. of Education et al. (In re Pope)*, No. 13-01008, 2013 WL 5488517, at *2 (Bankr. D. R.I. Sept. 25, 2013) (discussing service on the United States Department of Education under Bankruptcy Rule 7004(b)(4) and (5)).

entities as prescribed under Bankruptcy Rule 7004(b)(4) and (5). Mr. Morgan failed to properly serve the *Third Amended Complaint*. Accordingly, the *Third Amended Complaint* and the *Alias Summons* need to be served to the proper government entities.

CONCLUSION

The Court finds and concludes that Mr. Morgan did not properly serve the *Third Amended Complaint* on the Department of Education. Accordingly, it is **ORDERED**:

1. Mr. Morgan has fourteen (14) days from the entry of this Order to serve the *Alias Summons* and *Third Amended Complaint* on the United States Department of Education in accordance with Bankruptcy Rule 7004(b)(4) and (5).
2. Mr. Morgan must file a *Certificate of Service* in this adversary proceeding showing that the *Alias Summons* and *Third Amended Complaint* were properly served.
3. Failure to show sufficient service of the *Alias Summons* and *Third Amended Complaint* on the United States Department of Education may result in dismissal of the *Third Amended Complaint*.

cc: Debtor
Chapter 7 Trustee
United States Trustee
All Creditors on the Matrix