

Dated: July 02, 2025
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTER DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re:

Chasity Marie McDonald,
Debtor.

Case No.: 25-20260
Chapter 13

**MEMORANDUM OPINION AND ORDER
GRANTING, IN PART, TOWNE MORTGAGE
COMPANY'S MOTION FOR RECONSIDERATION OF
ORDER GRANTING DEBTOR'S MOTION UNDER RULE 3002.1**

This case came before the Court on June 17, 2025, at 10:00 a.m., on Towne Mortgage Company's, dba AmeriCU Mortgage ("Towne Mortgage's") *Motion for Reconsideration of Order Granting Debtor's Motion Under Rule 3002.1* ("Motion for Reconsideration").¹ The issue before the Court is two-fold. First, is whether the *Motion Under Rule 3002.1(e)* ("Rule 3002.1(e) Motion") was properly served consistent with the Bankruptcy Rules.² Second, is whether

¹ Mot. for Reconsideration, ECF No. 31.

² Hearing on Creditor's Mot. for Reconsideration on June 17, 2025 ("Hr'g. on June 17, 2025"), at 12:48 p.m.

sufficient notice was given regarding the hearing on the Rule 3002.1(e) Motion. Towne Mortgage argued that it did not receive a copy of the motion and it was not aware of the hearing on the Rule 3002.1(e) Motion.³ Chastity Marie McDonald (“Ms. McDonald”) argued that the Rule 3002.1(e) Motion was properly served on both Creditor and its counsel, Quintairos, Prieto, Wood & Boyer, PA (“Law Firm”).⁴ Upon review of the record, Creditor’s Motion for Reconsideration is granted, in part, for the reasons outlined below.

I. BACKGROUND

On January 16, 2025 (“Petition Date”), Ms. McDonald filed a chapter 13 petition, commencing her chapter 13 case.⁵ On January 16, 2025, Debtor’s attorney filed the matrix. Debtor’s Schedule A/B listed real property located in Memphis, TN 38134 (“real property”).⁶ Ms. McDonald filed her chapter 13 plan on the Petition Date.⁷ Debtor’s Schedule D listed the secured claim at \$127,000.00.⁸

On February 18, 2025, Ms. McDonald filed an amended chapter 13 plan.⁹ On March 24, 2025, Towne Mortgage filed its Proof of Claim 8-1, listing a secured claim at \$121,877.28, and arrearage in the amount of \$785.87.¹⁰ On April 9, 2025, Ms. McDonald filed a second amended chapter 13 plan, in which Towne Mortgage was scheduled to receive direct ongoing monthly

³ Hr’g. on June 17, 2025, at 12:43 p.m.

⁴ Hr’g. on June 17, 2025, at 12:45 p.m.

⁵ Voluntary Pet., ECF No. 1.

⁶ Voluntary Pet., Schedule A/B, ECF No. 1.

⁷ Ch. 13 Plan, ECF No. 2.

⁸ Voluntary Pet., Schedule D, ECF No. 1.

⁹ First Am. Ch. 13 Plan, ECF No. 14.

¹⁰ Proof of Claim No. 8-1.

mortgage payments and arrearage of \$785.87 to be paid at \$15.00 monthly at 0.00% interest through the chapter 13 plan.¹¹ On May 8, 2025, the chapter 13 plan was confirmed.¹²

On April 30, 2025, Towne Mortgage filed a *Notice of Postpetition Mortgage Fees, Expenses, and Charges* (“Notice of Postpetition Fees”) pursuant to Rule 3002.1(c) for a claim amount of \$1,550.00 in fees, expenses, and charges that were incurred after the case was filed.¹³ The Notice of Postpetition Fees is listed on the Claims Register. On May 6, 2025, Ms. McDonald filed the Rule 3002.1(e) Motion, contending that the amounts stated in the Notice of Postpetition Fees were not recoverable against her.¹⁴ On May 8, 2025, a *Notice of Hearing* was issued scheduling the hearing on the Rule 3002.1(e) Motion for May 20, 2025, at 10:00 a.m.¹⁵ On May 10, 2024, the BNC Certificate of Mailing docketed showed that the *Notice of Hearing* was served electronically on May 8, 2025 and by first class mail on May 10, 2025.¹⁶ On May 20, 2025, the Court called the Rule 3002.1(e) Motion for a hearing. No one appeared on behalf of Towne Mortgage, and the Court granted the Rule 3002.1(e) Motion.¹⁷ On May 29, 2025, the Court entered the *Order Granting Debtor’s Motion Under Rule 3002.1(e)* (“Order Granting Debtor’s Motion”).¹⁸ On June 4, 2025, Towne Mortgage filed its Motion for Reconsideration, claiming that it did not receive Debtor’s Rule 3002.1(e) Motion and only learned of the Order

¹¹ Second Am. Ch. 13 Plan, ECF No. 16. Debtor’s original chapter 13 plan and the first amended chapter 13 plan both listed the approximate arrearage to Creditor at \$0.00 to be paid at \$0.00 monthly at 0.00% interest.

¹² Order Confirming Ch. 13 Plan, ECF No. 20.

¹³ Notice of Postpetition Fees, ECF No. 18.

¹⁴ Rule 3002.1(e) Motion, ECF No. 19.

¹⁵ Notice of Hr’g, ECF No. 21.

¹⁶ BNC Certificate of Notice, ECF No. 24.

¹⁷ Hearing on Debtor’s Rule 3002.1(e) Motion on May 20, 2025 (“Hr’g. on May 20, 2025”), at 10:44 a.m.

¹⁸ Order Granting Debtor’s Mot., ECF No. 28.

Granting Debtor's Motion after it had been entered.¹⁹ At the June 17, 2025 hearing, counsel for Towne Mortgage and Ms. McDonald made their proffers and arguments on behalf of their respective clients. The Court took the matter under advisement.²⁰

II. DISCUSSION²¹

Towne Mortgage filed its Motion for Reconsideration under Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure, made applicable in bankruptcy cases, respectively, through Rule 9023 and Rule 9024 of the Federal Rules of Bankruptcy Procedure.²² Towne Mortgage did not pinpoint the specific subparagraph of Rule 60(b) in which it was seeking relief, but contended that, "it did not receive the Debtor's Motion, learned of the Order via mail after it had been entered, and the Debtor made material misrepresentations to the Court when it argued that

¹⁹ Mot. for Reconsideration, ECF No. 31.

²⁰ Hr'g. on June 17, 2025, at 12:48 p.m.

²¹ The Court has subject-matter jurisdiction under 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B). The following shall constitute the court's findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

²² Mot. for Reconsideration, ECF No. 31.

Rule 59(e) (made application through Rule 9023 of the Federal Rules of Bankruptcy Procedure) provides that: "A motion to alter or amend a judgment must be filed no later than 28 days after entry of the judgment." Fed. R. Bankr. P. 9023 (2024).

Rule 60(b) states:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b); Fed. R. Bankr. P. 9024 (2024).

the fees are not required by the underlying agreement or by non-bankruptcy law.”²³ To ensure that the underlying issues are resolved after “*notice and a hearing*,” the Court finds it appropriate to reconsider its Order Granting Debtor’s Motion under Rule 60(b)(6), as explained herein.

To address the issues of whether service was proper, and the notice of hearing was sufficient, the Court must determine whether the Rule 3002.1(e) Motion should be afforded the treatment of an objection to claim. The most persuasive argument in favor of treating a motion filed under Rule 3002.1(e) as an objection to claim is found in Rule 3002.1(d)²⁴ and the Official Form 410S2. Rule 3002.1(d) explains that a notice under Rule 3002.1(b) and (c) must be filed as a supplement to the proof of claim, although not subject to Rule 3001(f). The Official Form 410S2 states, “File this form as supplement to your proof of claim.”²⁵ A motion filed pursuant to Rule 3002.1(e) can be afforded the same treatment as an objection to claim (challenging the secured creditor’s supplement to its proof of claim filed under Rule 3002.1(c)).²⁶ To give full effect to the “notice and hearing” requirement of subparagraph 3002.1(e), the Court draws guidance from Rule 3007.²⁷ Thus, Ms. McDonald’s Rule 3002.1(e) Motion challenging Towne

²³ Mot. for Reconsideration, ECF No. 31.

²⁴ Rule 3002.1(d) reads: “Filing Notice as a Supplement to a Proof of Claim. A notice under (b) or (c) must be filed as a supplement to the proof of claim using Form 410S-1 or 410S-2, respectively. The notice is not subject to Rule 3001(f).” Fed. R. Bankr. P. 3002.1(d) (2025).

²⁵ Notice of Postpetition Fees, ECF No. 18.

²⁶ An argument can be made that the service and notice of hearing of a motion under Rule 3001.2(e) could fall under the more general provisions of Rules 9014(b) and 9006(d). Rule 9014(b) provides that a motion must be served within the time prescribed under Rule 9006(d) and served pursuant to Rule 7004. Rule 9006(d) provides that: “A written motion . . . and notice of any hearing must be served at least 7 days before the hearing date, unless the court or these rules set a different period.” The Court notes that Fed. R. Bankr. P. 2002 (regarding notices) has no specific provision for setting notice hearings for a motion filed pursuant to Rule 3002.1(e). The only “different period” is set forth under Rule 3007(a), which calls for service of the objection and notice to be done at least 30 days prior to the scheduled hearing.

²⁷ *Cf. In re Tuneberg*, Case No. 11-80629-G3-132012, 2012 WL 3744719, *2 (S.D. Tex. August 28, 2012) (denying without prejudice a debtor’s motion under 3002.1(e) because the motion was not served pursuant to the Southern of

Mortgage's supplement to its proof of claim is subject to service and notice requirements under Rule 3007.

Rule 3007(a)(1) and (2), in its entirety, states:

(a) Time and Manner of Serving the Objection.

(1) *Time to Serve.* An objection to a claim and a notice of the objection must be filed and served *at least 30 days before a scheduled hearing* on the objection or any deadline for the claim holder to request a hearing.

(2) *Whom to Serve; Manner of Service.*

(A) *Serving the Claim Holder.* The notice--substantially conforming to Form 420B--and objection must be *served by mail on the person the claim holder most recently designated to receive notices on the claim holder's original or latest amended proof of claim*, at the address so indicated. If the objection is to a claim of:

- (i) the United States or one of its officers or agencies, service must also be made as if it were a summons and complaint under Rule 7004(b)(4) or (5); or
- (ii) an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, service must also be made under Rule 7004(h).²⁸

The first question before the Court is whether the motion was properly served. Service is proper under Rule 3007(a)(2)²⁹ when served “by mail on the person the claim holder most recently designated to receive notices on the claim holder’s original or latest amended proof of claim, at the address so indicated[.]”³⁰ On Towne Mortgage’s Proof of Claim 8-1,³¹ under the heading “Where should notices to the creditor be sent?” the address Towne Mortgage Company,

District of Texas Bankruptcy Court Local Rule 3007-1(d), and the local rule outlined in local procedures for objections to claims).

²⁸ Fed. R. Bankr. P. 3007(a) (2005) (emphasis added).

²⁹ Subparagraphs 3007(a)(2)(A)(i) and (ii) do not apply in this case, because Towne Mortgage is neither a government agency or department nor a federally insured bank.

³⁰ Fed. R. Bankr. P. 3007(a)(2) (2024).

³¹ Proof of Claim No. 8-1.

888 W. Big Beaver Road, Suite A, Troy, MI, 48083 was listed.³² The certificate of service on Ms. McDonald's Rule 3002.1(e) Motion listed "Towne Mortgage Company, d/b/a AmeriCU Mortgage, 888 W. Big Beaver Road, Suite A, Troy, MI 48083."³³ Because Towne Mortgage's address on its Proof of Claim 8-1 substantially matched the address on Debtor's Rule 3002.1(e) Motion's certificate of service, the motion was properly served.

The second question before the Court is whether Towne Mortgage received sufficient notice of the hearing. Rule 3007(a)(1) requires that: "An objection to a claim and a notice of the objection must be filed and served *at least 30 days* before a scheduled hearing on the objection or any deadline for the claim holder to request a hearing."³⁴ Here, the hearing on the Rule 3002.1(e) Motion was scheduled for May 20, 2025, at 10:00 a.m., and the *Notice of Hearing* was issued on May 8, 2025.³⁵ The Bankruptcy Noticing Center ("BNC") sent the notice of hearing via "electronic transmission" to Towne Mortgage's email at bkr@townemortgage.com at 10:07 p.m., on May 8, 2025.³⁶ On May 10, 2025, the BNC sent via "first class mail" the notice of hearing to Towne Mortgage's counsel at Quintairos, Prieto, Wood & Boyer, PA, 2400 E. Commercial Blvd., Ste. 520, Fort Lauderdale, FL 33308-4050.³⁷ Through BNC's electronic service, Towne Mortgage received less than 12 days' notice of the notice of hearing. With BNC's service by first class mail, Towne Mortgage received less than 10 days' notice of the hearing. To

³² Proof of Claim No. 8-1.

³³ Rule 3002.1(e) Motion, ECF No. 19.

³⁴ Fed. R. Bankr. P. 3007(a)(1) (2024) (emphasis added).

³⁵ Notice of Hearing, ECF No. 21.

³⁶ BNC Certificate of Notice, ECF No. 24. This email address is listed on Proof of Claim 8-1 and is connected to Towne Mortgage Company, dba AmeriCU Mortgage, 888 W. Big Beaver Road, Suite A, Troy, MI 48084-4736.

³⁷ BNC Certificate of Notice, ECF No. 24.

provide Towne Mortgage with sufficient notice of the hearing (drawing guidance from Rule 3007) the Court finds and concludes that the Rule 3002.1(e) Motion should be scheduled for a hearing granting Towne Mortgage sufficient time to respond to the underlying issues presented under subparagraphs 3002.1(c) and (e).

III. CONCLUSION AND ORDER

For the reasons stated above, the Court finds and concludes that Towne Mortgage's Motion for Reconsideration should be granted, in part. Accordingly, it is **ORDERED**:

1. Towne Mortgage's *Motion for Reconsideration of Order Granting Debtor's Motion Under Rule 3002.1* is **GRANTED, IN PART**.
2. Separately, Ms. McDonald's Rule 3002.1(e) Motion will be rescheduled for a hearing.

Copies to be served on:

Debtor: Chasity Marie McDonald, 6570 Charles Bryan Cove, Memphis, TN 38134.

Debtor's Attorney: Herbert D. Hurst, Hurst Law Firm, P.A., P.O. Box 41497
Memphis, TN 38174-1497; Email: bkmail@thehurstlawfirm.com.

Creditor:

- Towne Mortgage Company d/b/a AmeriCU Mortgage, 888 W. Big Beaver Road, Suite A, Troy, MI 48084-4736; Email: bkr@townemortgage.com.
- Justin D. Plean, Authorized Agent for Secured Creditor, c/o Quintairos, Prieto, Wood & Boyer, P.A., 2400 E. Commercial Blvd., Suite 520, Fort Lauderdale, FL 33308.

Creditor's Attorney: C. Brent, Esq., Wardrop, Quintairos, Prieto, Wood & Boyer, P.A., 365 Northridge Road, Suite 230, Atlanta, GA 30350; Email: brent.wardrop@qpwbllaw.com.