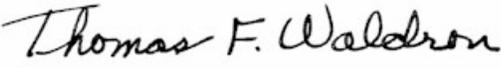


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: December 28, 2006


Thomas F. Waldron
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

In re: THOMAS B. INGRAM
LENA L. INGRAM,

Debtors

Case No. 00-33631

Judge Waldron
Chapter 13

**DECISION ON ORDER GRANTING
NATIONAL CAPITAL
MANAGEMENT'S MOTION TO SET
ASIDE ORDER ON DEBTORS'
MOTION OBJECTING TO PROOF OF
CLAIM OF CREDITOR (DOC. 78)**

DATED AT DAYTON, OHIO this 28th Day of December, 2006:

Pending before the Court are the *Debtors' Motion Objecting To Proof Of Claim Of Creditor And Notice* (Doc. 53), the *Amended Certificate Of Service* (Doc. 54), the *Certification Of Proper Service And Lack Of Response* (Doc. 55), the *Order On Debtors' Motion Objecting To Proof Of Claim Of Creditor* (Doc. 56), National Capital

Management's *Motion To Set Aside Order On Debtors' Motion Objecting To Proof Of Claim Of Creditor* (Doc. 78) and the *Debtors' Response to National Capital Management's Motion To Set Aside Order On Debtors' Motion Objecting To Proof Of Claim Of Creditor* (Doc. 79). The Court notes that there is a separately pending adversary proceeding involving the same parties and essentially the same contested issues. See *Ingram v. National City Bank et al.*, Adversary Case No. 06-3043.

All of the above filings concern the correct amount of the allowed secured claim of National Capital Management ("National Capital"), the current holder of a mortgage on the Debtors' property. National Capital is the assignee of National City Bank, the entity filing the initial proof of claim. See Proof of Claim #5 Filed June 28, 2004 by National City Bank. See also *Joint Notice Of Transfer Of Claim Pursuant To FRBP Rule 3001(e)(2) And Waiver Of Opportunity To Object* (Doc. 71) and *Notice Of Filing Transferred Or Assigned Proof(s) Of Claim* (Doc. 72)].

It is undisputed that all of the objections concerning the disputed Proof of Claim (Claim No. 5) were served by regular mail, not certified mail, on the Creditor National City Bank. It is also undisputed that National City Bank was, at the time of service, an "insured depository institution" as defined in section 3 of the Federal Deposit Insurance Act.

The parties' dispute centers on interpretations of the following Federal Rules of Bankruptcy Procedure:

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.

Rule 7004(h). SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION.

(h) Service of process on an insured depository institution

—Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding 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.

Rule 9014. Contested Matters

(a) Motion. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

(b) Service. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

(c) Application of Part VII rules. Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. The following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pre-trial disclosure), and 26(f) (mandatory meeting before scheduling conference/ discovery plan). An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.

(d) Testimony of witnesses. Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.

(e) Attendance of witnesses. The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify.

An appropriate reading of Federal Rule of Bankruptcy Procedure 3007 recognizes that an objection to the allowance of a claim is, generally, a contested matter governed by the provisions of Rule 9014, unless the objection to the claim contains a demand for relief that is encompassed by the provisions of Rule 7001, which govern

adversary proceedings. Neither part asserts that the issues involving the disputed proof of claim require an adversary proceeding.

The provisions of Federal Rule of Bankruptcy Procedure 9014 contain a specific provision [(b) Service] which provides:

The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

The provisions of Rule 7004 contain a specific provision added in 1994 to govern service of process on an “insured depository institution.” This service is required “. . . by certified mail addressed to an officer of the institution.” There are certain exceptions to certified mail service; however, neither party asserts that any of these exceptions are relevant in this proceeding.

Accordingly, the record establishes that, although the Creditor, National City Bank, may have received notice of the Debtors’ original motion objecting to the claim (Doc. 53), there was no service on National City Bank by certified mail.

Pursuant to the provisions of Federal Rule of Bankruptcy Procedure 9024, National Capital has demonstrated that as a result of the failure to obtain proper service, the *Order On Debtors’ Motion Objecting To Proof Of Claim Of Creditor* (Doc. 56) must be vacated.

Accordingly, the Court **GRANTS** National Capital Management’s *Motion To Set Aside Order On Debtors’ Motion Objecting To Proof Of Claim Of Creditor* (Doc. 78) and **VACATES** the *Order On Debtors’ Motion Objecting To Proof Of Claim Of Creditor* (Doc. 56). An order in accordance with this decision is simultaneously entered.

SO ORDERED.

c:

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(Debtors)

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the Chapter 13 Office), 131 North Ludlow Street, Suite 900, Dayton, Ohio 45402

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