UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN

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In re:

ROBERT BONOFIGLIO,

Debtor.
_____/

Case No: GG 01-07453
Chapter 7

RODNEY C. MELLON,

Plaintiff,

v.

ROBERT BONOFIGLIO,

Defendant.
_____/

Adversary Proceeding
No. 01-88454

MEMORANDUM OPINION DENYING PLAINTIFF'S MOTION TO RECONSIDER ORDER SETTING ASIDE DEFAULT JUDGMENT

Appearances:

Jeff A. Moyer, Esq., Wyoming, Michigan, Attorney for Plaintiff, Rodney C. Mellon.

Vern J. Steffel, Esq., Battle Creek, Michigan, Attorney for Garnishee Defendant, Battle Creek Obstetrics and Gynecology Associates, P.C.

On June 23, 2004, a default judgment in the amount of $66,251.58 was entered in favor of Rodney C. Mellon (the "Plaintiff") against Robert Bonofiglio (the "Debtor Defendant"). In November 2004, the Plaintiff's efforts to collect this judgment caused him to file a Request and Writ of Garnishment against Battle Creek Obstetrics and Gynecology Associates, P.C. (the "Garnishee Defendant"). The Debtor Defendant was employed by the Garnishee Defendant from October 2002 through December 2005. The writ of garnishment was served upon "Battle Creek OBGYN Association, 3238 Capital

Avenue, SW, Battle Creek, MI 49015" by certified mail on November 29, 2004. Importantly, the writ of garnishment was not sent to the attention of the Garnishee Defendant's resident agent, Dr. Brian Knaus ("Knaus") as required by Federal Rule of Bankruptcy Procedure 7004(b)(3). Nor was service specifically directed to an officer or agent by title. Service was apparently accepted by the receptionist at the Garnishee Defendant's office. (Dkt. No. 108.)

The Garnishee Defendant did not respond to the writ of garnishment and a default judgment was entered against it on August 10, 2005. On April 22, 2006, a court officer appeared at the Garnishee Defendant's office to seize property in satisfaction of the judgment. On March 30, 2006, the Garnishee Defendant filed its Motion for Relief from Default Judgment. The Garnishee Defendant's motion requested that this court set aside the default judgment because it was not properly served.

This court heard oral argument on the Garnishee Defendant's motion on April 12, 2006. At the conclusion of the hearing, the court issued an extemporaneous oral bench opinion. The court noted that under Bankruptcy Rule 7004(b)(3), the most liberal of the potentially applicable service rules, service of a domestic corporation by first class mail requires that a copy of the summons and complaint be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process . . . ." FED. R. BANKR. P. 7004(b)(3). Although the court inquired as to whether the receptionist might have been authorized, either explicitly or implicitly, to accept service of process on behalf of the Garnishee Defendant, the court's focus was on the sufficiency of service under Rule 7004(b)(3). Because the Plaintiff failed to direct the writ of garnishment to the attention of the Garnishee Defendant's

resident agent, Knaus, the court concluded that service was improper. In accordance with the court's oral ruling, an order setting aside the default judgment against the Garnishee Defendant was entered on April 17, 2006.

The Plaintiff timely filed his motion for reconsideration of the court's order granting the Garnishee Defendant relief from the default judgment on April 27, 2006. The court has carefully reviewed the Plaintiff's motion and has concluded that oral argument would not materially assist in its determination regarding the requested relief.

The Plaintiff's motion for reconsideration was filed under Bankruptcy Rule 9023, which makes Federal Rule of Civil Procedure 59 applicable to this proceeding. Matter of No-Am Corp., 223 B.R. 512, 513 (Bankr. W.D. Mich. 1998). Relief under Rule 59(e) is only justified in instances where there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice. See GenCorp, Inc. v. Am. Intern. Underwriters, 178 F.3d 804, 834 (6th Cir. 1999). To the extent a motion for relief from judgment is based on newly discovered evidence, the "movant must demonstrate (1) that it exercised due diligence in obtaining the information and (2) that the evidence is material and controlling and clearly would have produced a different result if presented before the original judgment." Good v. Ohio Edison Co., 149 F.3d 413, 423 (6th Cir. 1998) (citation and internal quotation marks omitted). Motions for reconsideration are "not an opportunity to re-argue a case" and should not be used by the parties to "raise arguments which could, and should, have been made before judgment issued." Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 146 F.3d 367, 374 (6th Cir. 1998); FDIC v. World Univ. Inc., 978 F.2d 10, 16 (1st Cir. 1992).

Notwithstanding the Plaintiff's well-crafted motion based upon prior governing law,

the court has determined that there is no sufficient basis for setting aside its prior order. The Plaintiff's motion relies primarily on asserted newly discovered evidence that three different employees of the Garnishee Defendant have accepted service of process in past lawsuits, even when the registered agent was designated by name. However, the court's holding was primarily based on the fact that the writ of garnishment was not mailed to the attention of Knaus, the Garnishee Defendant's registered agent, as required under Bankruptcy Rule 7004(b)(3). See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (Bankr. 9th Cir. 2004) ("[N]ationwide service of process by first class mail is a rare privilege which should not be abused . . . thus, the service has to be made to a specifically named officer." Accordingly, service on corporation "was insufficient under the plain words of Rule 7004(b)(3)" when it failed to "specify a person or even an office."); York v. Bank of America, N.A. (In re York), 291 B.R. 806, 811 (Bankr. E.D. Tenn. 2003) (Although courts do not agree on whether service under Rule 7004(b)(3) "must include the corporate officer's name or only the title," service was insufficient when it "was not addressed to an officer by either name or title."). Evidence that non-appointed agents have accepted service of process for the Garnishee Defendant in the past is not a material fact and would not alter the court's conclusion that service of the writ of garnishment was legally insufficient in this adversary proceeding.

Therefore, the Plaintiff's motion for reconsideration is denied. A separate order shall be entered accordingly.

___/s/_____
Honorable James D. Gregg
United States Bankruptcy Judge

Dated this 3rd day of August, 2006,
at Grand Rapids, Michigan