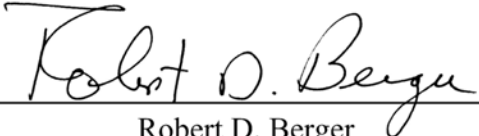


The relief described hereinbelow is **SO ORDERED**.

SIGNED this 20th day of June, 2024.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

TW AUTOMATION, LC

Case No. 23-21184
Chapter 11

Debtor.

**ORDER GRANTING CREDITOR DAVID STADTMUELLER'S
MOTION FOR LEAVE TO FILE PROOF OF CLAIM**

The matter comes before the Court on creditor David Stadtmueller's motion for leave to file proof of claim¹ and debtor TW Automation's objection

¹ ECF 42. David Stadtmueller is represented by Colin Gotham. This is a core proceeding under 28 U.S.C. § 157(a), (b)(2)(B), and venue is appropriate under 28 U.S.C. § 1409.

to the same.² In his motion, Stadtmueller requests additional time to file a proof of claim for his unscheduled indemnification claim against TW on the basis that he did not receive timely notice of the bankruptcy or the proof of claim bar date.³ TW objected, arguing that it sent notice to Colin Gotham, Stadtmueller's attorney, and notice to Gotham should be imputed to Stadtmueller.⁴ However, at the hearing on the motion, Gotham asserted that he was not Stadtmueller's attorney when the bankruptcy was filed and, without an attorney-client relationship, any notice he received could not be imputed to Stadtmueller.⁵ Neither party disputes that Stadtmueller did not receive actual notice before the proof of bar date lapsed.

Under Fed. R. Bankr. P. 3003(c), a creditor in a chapter 11 case may be allowed to file a late proof of claim if it can show that its failure "was the result of excusable neglect" under Fed. R. Bankr. P. 9006(b),⁶ or its

² ECF 54. TW is represented by Erlene W. Krigel.

³ ECF 42 ¶¶ 4, 5. The proof of claim bar date in this case was December 14, 2023. See ECF 16. The bar date for Subchapter V cases is set automatically pursuant to D. Kan. LBR 3003.1(a).

⁴ ECF 54.

⁵ ECF 62.

⁶ Rule 9006(b)(1) permits a court to allow a late filing if the movant's failure to comply with an earlier deadline "was the result of excusable neglect." Fed. R. Bankr. P. 9006(b)(1). Excusable neglect includes late filings caused by "inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party's control." *Pioneer*, 507 U.S. at 388. It is well-established that the excusable neglect standard in Rule 9006(b)(1) applies to filing late proof of claims

circumstances satisfy one of the four conditions set forth in Fed. R. Bankr. P. 3002(c).⁷ One such condition, Rule 3002(c)(6), is relevant here; it provides that the court may extend the time to file a proof of claim if the court “finds that notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.” Fed. R. Bankr. P. 3002(c)(6).⁸

under Rule 3003(c). *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 389 (1993).

⁷ Rule 3003(c)(3) provides:

The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).⁹

FED. R. BANKR. P. 3003(c)(3).

⁸ The quoted language reflects the 2022 amendment to Rule 3002(c)(6), which greatly expanded the Rule’s scope. The previous version of the Rule allowed courts to grant an extension under this condition only if: the debtor failed to timely file the list of creditors’ names and addresses required under Rule 1007(a); or notice was mailed to a creditor with a foreign address. *See* 9 COLLIER ON BANKRUPTCY ¶ 3002.03[7] n.52 (Alan N. Resnick & Henry J. Sommer eds. 16th ed. 2023).

Unlike Rule 3003(c), Rule 3002(c)(6) is explicitly exempt from compliance with Rule 9006(b) and does not require a showing of excusable neglect. FED. R. BANKR. P. 9006(b)(3) (“The court may enlarge the time for taking action under Rules . . . 3002(c), . . . only to the extent and under the conditions stated in those rules.”); *see also Jones v. Arross*, 9 F.3d 79, 81 (10th Cir. 1993) (excusable neglect under Rule 9006(b) is inapplicable to Rule 3002(c)). However, applying Rule 3002(c)(6) to a chapter 11 creditor raises an interesting question: must Stadtmueller comply with the requirements of Rule 3002(c)(6) *and* Rule 3003(c), which implicates Rule 9006(b), to receive an extension of time to file a proof of claim? The Court is unaware of a case that addresses this issue, likely due to the recency of the amendment. Regardless, the Court need not decide this issue here because, under either Rule 3003(c) or Rule 3002(c)(6), insufficient notice may constitute cause to extend the bar date. *See e.g. Rowe Int’l, Inc. v. Herd (In re Herd)*, 840 F.2d 757, 759 (10th Cir. 1988) (known creditors must receive adequate formal notice to satisfy due process and lack of notice may constitute cause under Rule 3003(c)); *In re First*

A debtor who properly files a list of creditors that includes names and addresses ensures that such creditors receive adequate notice of the bankruptcy and various deadlines in accordance with due process. See 11 U.S.C. § 521(a)(1)(A) (requiring debtors to file a list of creditors); Fed. R. Bankr. P. 1007(a)(1) (requiring debtor to file a list “containing names and addresses of each entity to be included in the schedules); *Chanute Prod. Credit Ass’n v. Schicke (In re Schicke)*, 290 B.R. 792, 799-800 (10th Cir. BAP 2003), *aff’d*, 97 F. App’x 249 (10th Cir. 2004) (the notice of commencement served on the information provided by the debtor under § 521(a)(1) gives creditors notice and complies with due process). The burden is on the debtor to show that notice was “reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010) (notice of the bankruptcy satisfies due process).

Magnus Fin. Corp., 415 B.R. 416, 422 (Bankr. D. Ariz. 2009) (due process and the bankruptcy rules “entitle the creditor to adequate and reasonable notice of bar dates” and lack of sufficient notice, may be sufficient cause to extend the bar date) (citing cases); 9 COLLIER ON BANKRUPTCY ¶ 3003.03[b] (factors in determining whether to grant an extension under Rule 9006(b) may include whether the creditor had notice).

Under the general rule, it is permissible in bankruptcy for the debtor to schedule a creditor in care of the creditor's attorney in some circumstances provided, however, that the attorney is the creditor's agent in matters related to the bankruptcy. *In re Schicke*, 290 B.R. at 802–03; *In re Vrusho*, 634 B.R. 660, 668 (Bankr. D.N.H. 2021); *In re Griggs*, 306 B.R. 660, 665 (Bankr. W.D. Mo. 2004); *Vicenty v. San Miguel Sandoval (In re San Miguel Sandoval)*, 327 B.R. 493, 508 (B.A.P. 1st Cir. 2005); *see also Ford Motor Credit Co. v. Weaver*, 680 F.2d 451, 457 (6th Cir. 1982). This requires “some nexus between the creditor's retention of the attorney and the creditor's issues with the debtor.” *In re Schicke*, 290 B.R. at 802–03. If the attorney is, indeed, the agent of the creditor, sending notice to the creditor in care of its agent-attorney may be appropriate and reasonably calculated to inform the creditor and, thus, satisfy due process because it is reasonable to assume that the agent-attorney will communicate the notice to their client. *Id.* at 803; *see generally Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 92 (1990) (a party is “considered to have notice of all facts, notice of which can be charged upon the attorney.”) (internal citations omitted).

TW argues that Gotham received “adequate notice of the bankruptcy” as a creditor, and that notice can be imputed to Stadtmueller.⁹ First, it is

⁹ ECF 54 ¶ 5(b), (f).

important to clarify that Gotham was not listed as a creditor, and thus, did not receive notice as one. For unclear reasons, TW listed Gotham's law firm as a creditor; Gotham was not mentioned in the Schedules.¹⁰ Thus, the primary question here is whether sending notice to Gotham's law firm in its own right was reasonably calculated to inform Stadtmueller, a past client and unsecured creditor, of the bankruptcy. Even assuming without deciding that Gotham was Stadtmueller's agent, TW fails to establish that Stadtmueller would reasonably receive notice. By omitting Stadtmueller from its Schedules, TW ensured that any notice Gotham received would not identify Stadtmueller as the intended recipient, making it incredibly difficult for Gotham, who no longer represented Stadtmueller, to unbiddenly conclude that Stadtmueller needed to be informed of the bankruptcy. This is insufficient and does not satisfy due process. *See e.g. Maldonado v. Ramirez*, 757 F.2d 48, 51 (3d Cir. 1985) (notice to attorney was insufficient as the notice did not identify the client); *In re San Miguel Sandoval*, 327 B.R. at 509 (notice sent to the law firm of a creditor's attorney that did not identify the creditor or the party in the bankruptcy case does not satisfy due process); *see generally Mullane*, 339 U.S. at 314 (the chance of notice is reduced when the notice "does not even name those whose attention it is supposed to attract.").

¹⁰ ECF 1 at pp. 15 line 3.3, 34

Because the notice did not identify Stadtmueller, notice cannot be imputed to Stadtmuller as it was not reasonably calculated to inform him of the bankruptcy.

For these reasons, Stadtmueller did not receive adequate notice of the bankruptcy or proof of claim bar date. Therefore, under Rule 3002(c)(6), Stadtmueller's motion for leave to file a proof of claim is GRANTED, and Stadtmueller will have 60 days from the date of this order to file a proof of claim.

IT IS SO ORDERED.

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