

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 13 Case
)	Number <u>92-60571</u>
DEBORAH H. ARCHER)	
d/b/a KINDER KOLLEGE)	
)	
Debtor)	
_____)	
)	
UNITED STATES OF AMERICA,)	
acting by and through its agency)	
the INTERNAL REVENUE SERVICE)	
)	
Movant)	
)	
vs.)	
)	
DEBORAH H. ARCHER)	
d/b/a KINDER KOLLEGE, Debtor)	
AND BARNEE C. BAXTER, JR.)	
CHAPTER 13 TRUSTEE)	
)	
Respondents)	

ORDER

The United States of America, by and through its counsel, Jay Gardner, United States attorney, moves to dismiss a contested matter, debtor's objection to proof of claim filed by the Internal Revenue Service ("IRS"), due to improper service. Based on the pleadings on file and a review of the entries in the case docket, I enter the following order vacating the order sustaining the debtor's

objection to claim.

On March 26, 1993 debtor filed an objection to the claim of the IRS. Mail service was made by debtor's attorney and the bankruptcy court clerk. Both served the Internal Revenue Service, but neither served the district United States attorney or the Attorney General of the United States.

Pursuant to the notice, a hearing on debtor's objection was held on April 26, 1993. The IRS made no response to the motion and only the debtor and her attorney were present. Subsequently, on May 17, 1993 the IRS filed an amended claim in the case. On July 29, 1993 I approved and issued the order submitted by debtor's attorney based on testimony at the April 26 hearing and in response to the changes made by the amended claim of the IRS. One day earlier, on July 28, 1993 the district United States attorney filed an objection with this court requesting that I not enter the order submitted by the debtor as the district United States attorney's office had not received any notice of the proposed treatment of the IRS claim prior to receiving a copy of the proposed order. Unfortunately, this objection failed to come to my attention until the district United States attorney filed this present motion on September 2, 1993.

In his present motion the United States attorney seeks to dismiss the contested matter, debtor's objection to the proof of

claim filed by the IRS, because the objection was not served upon the Attorney General of the United States. When an objection to a claim is made, Rule 3007 requires that "[a] copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant." As objections to claims are contested matters, Bankruptcy Rule 9014 requires service of the motion in accordance with Bankruptcy Rule 7004. When the Internal Revenue Service is the claimant service must be made on the United States Attorney for the district in which the action is brought, on the Attorney General of the United States at Washington, D.C., and on the agency itself. See Federal Rule of Bankruptcy Procedure 7004(b)(4), (5); In re Schweitzer, 145 B.R. 292, 293 (Bankr. E.D. Ark. 1992); United States v. Oxylance Corporation, 115 B.R. 380, 381 (N.D. Ga. 1990).

In this contested matter, neither the district United States attorney or the Attorney General of the United States was served. Improper service may warrant dismissal of a contested matter. Schweitzer, 145 B.R. at 293. However, dismissal of the contested matter is not at issue as a final order has already been entered on this objection. Relief from an order or judgment is available to the United States attorney under Bankruptcy Rule 9024¹

¹Although the United States attorney's motion was not made under Bankruptcy Rule 9024, this court has the power to treat it as such. See 11 Charles A. Wright & Arthur R. Miller, Federal Practice

which rule incorporates Federal Rule of Civil Procedure 60.

. . . On motion and upon such terms as are just, the court may relieve a party or a party's representative from a final judgment, order or proceeding for the following reasons:
. . . (4) the judgment is void;

Fed. R. Civ. P. 60(b)(4). The effect of improper service on the United States Attorney and the Attorney General of the United States is to deprive the court of personal jurisdiction over those parties. Schweitzer, 145 B.R. at 293 (citing Oxylance, 115 B.R. at 380 n.1.). A judgment as to those parties is void and may be collaterally attacked. In re Harlow Properties, Inc., 56 B.R. 794, 796 (Bankr. 9th Cir. 1985) (citing 7 Moore's Federal Practice para. 60.25[2] (3d ed. 1985)). In this case, the United States attorney specifically challenged the court's jurisdiction over the contested matter in his motion, which I have treated as a request for relief under Bankruptcy Rule 9024. As the United States attorney and the Attorney General for the United States have not waived any objection to a lack of personal jurisdiction, I find that this court never had jurisdiction to affect the rights of the United States by the order of July 29.²

Accordingly, pursuant to Bankruptcy Rule 9024 and FRCP 60(b)(4), my order on objection to claim of Internal Revenue Service

and Procedure: Civil § 2865 (1973).

²The fact that service was made on the IRS will not excuse failure to effect service on the United States attorney or the Attorney General of the United States because the claim filed by the IRS is a claim of the United States. Oxylance, 115 B.R. at 381.

dated July 29, 1993 is hereby ORDERED vacated; and further

ORDERED that the clerk shall set continued hearing on the debtor's objection to claim of the Internal Revenue Service and serve the appropriate parties with the objection and notice of hearing.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this _____ day of September, 1993.