

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

In re:

CAROL A. KAIN,  
  
Debtor.

CASE NO.: 12-31492-KKS  
CHAPTER: 7

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**ORDER GRANTING DEBTOR'S AMENDED EMERGENCY MOTION TO DISALLOW  
AND SUSTAINING OBJECTION TO TELEPHONIC AUCTION (DOC. 47)**

The issue in this case is whether Federal Rule of Bankruptcy Procedure 9006(f), otherwise known as the "mailbox rule," applies to extend a deadline established by the Trustee for receipt of competing bids for assets being sold by the Trustee.

The facts are undisputed. On January 9, 2013 the Chapter 7 Trustee (the "Trustee") filed and served a Report and Notice of Intention to Sell Property of the Estate (the "Notice," Doc. 30), advising of her intent to sell to the Debtor the equity in a 2000 Mercedes Benz for \$1165.00 and certain medical equipment for \$70.00. The Notice contained a negative notice legend pursuant to N.D. Fla. Local Rule 2002-2, giving parties twenty-one (21) days from the date of service of the Notice within which to file objections to the Trustee's proposed sale of the assets. The Notice also provided that any higher bids for the purchase of the assets "*must be received by the Trustee...no later than twenty-one (21) days from the mailing of this notice.*" (Emphasis added.) Twenty-one days from the mailing of the Notice fell on Wednesday, January 30, 2013. The Trustee received a higher bid from a third party, Dr. Michael Givens, on Monday, February 4, 2013, five days after her established deadline. Based on receipt of this higher bid, which the Trustee deemed timely, the Trustee then scheduled a telephonic auction to be held on February 20, 2013. In response, the Debtor filed her objection to and motion to disallow the auc-

tion sale, asserting, *inter alia*, that the higher bid was untimely under the terms of the Notice (Doc. 47).

The Court held an expedited hearing on February 19, 2013, after which the Court entered an order temporarily suspending the Trustee's auction to give the parties time to brief the issues, which they have now done. Having reviewed the pleadings, including the parties' memoranda of law, and heard argument of the Debtor and the Trustee, the Court finds that the higher bid was untimely and sustains the Debtor's objection to the Trustee's proposed auction sale.

The Trustee argues that Rules 9006(a)(1)(C) and 9006(f), Federal Rules of Bankruptcy Procedure, extended the deadline for parties in interest to submit higher bids to purchase the assets being sold, and that therefore Dr. Givens' bid was timely. Rule 9006(a) applies to computing a time period "specified *in these rules ... in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute* that does not specify a method of computing time." (Emphasis added.) Rule 9006(a)(1)(C) states that if the last day to which these Rules apply is a Saturday the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Rule 9006(f) provides that: "[w]hen there is a right or requirement to act or undertake some proceedings within a prescribed period after service and the service is by mail ... three days are added after the prescribed period *would otherwise expire under Rule 9006(a).*" (Emphasis added.)

The Trustee, applying Rule 9006(f), argues that because the Notice was served by mail, three days were automatically added to her deadline for submitting higher bids and that therefore the higher bids were to be received by Saturday, February 2, 2013. Then applying Rule 9006(a)(1)(C), the Trustee asserts that because February 2 was a Saturday, the last day for higher bids to be received in her office was Monday, February 4, 2013, and concludes that Dr. Givens' bid was therefore timely under the Bankruptcy Rules. The Trustee relies on *In re Lumsden*, 242

B.R. 71 (Bankr. M.D. Fla. 1999), in which the bankruptcy court applied Rule 9006(f) to the objection period provided in a negative notice legend.

The Trustee's reliance on *Lumsden* is misplaced. *In re Lumsden* does not apply to the facts before this Court because here, the Trustee is attempting to use Rule 9006 to extend a deadline that she established for receipt of competing bids, rather than a deadline to file objections to the Notice. Rule 9006(a)(1) and (f) would have applied to an objection to the Notice and would have made any such objection timely if it was received by the Clerk of Court on Monday, February 4, 2013. That is not what we have here. Here, we have a date certain by which higher bids were to be *received* by the Trustee, which date fell on a Wednesday and was clearly set forth in the Notice. Although the Trustee's deadline for bids was measured by adding twenty-one days to the date of mailing, it nonetheless was an absolute date that a qualifying higher bid *must* be *received* by the Trustee. The Trustee's deadline for submitting higher bids is not a "time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time" to which Rule 9006 applies. This deadline was established by the Trustee herself; had the Trustee intended bidders to have more time to deliver competing bids to her office if they were sent by mail she could have so stated in the Notice; she did not.

This Court well recognizes that in accepting the higher bid from Dr. Givens and scheduling an auction sale of the assets the Trustee was attempting to maximize the value of the assets for this bankruptcy Estate. The Trustee's good intentions cannot, however, change the applicability, or not, of the Rules of Procedure. The higher bid the Trustee received from Dr. Michael Givens was not received by the Trustee by the deadline stated in the Notice and is untimely. For the reasons stated it is:

ORDERED:

1. The Debtor's Amended Emergency Motion to Disallow and Object to Telephonic Auction is GRANTED.

2. The Debtor's Objection to the Telephonic Auction is SUSTAINED.

DONE and ORDERED in Tallahassee, Florida this the 2nd day of April, 2013.



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KAREN K. SPECIE  
United States Bankruptcy Judge

cc: all parties in interest