

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

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10 In Re:

Case No. C10-1043-JCC

11 HELEN MARGARET ZEMBAL,

ORDER

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13 Debtor.
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16 This matter comes before the Court on Appellant Helen Zembal's brief on appeal from
17 judgment in the U.S. Bankruptcy Court for the Western District of Washington (Dkt. No. 8),
18 Appellee Christ Sieritis's response brief (Dkt. No. 9), and Appellant's reply brief. (Dkt. No.
19 10.) Having thoroughly considered the parties' briefing, the Court finds oral argument
20 unnecessary and hereby AFFIRMS the decision of the Bankruptcy Court for the reasons
21 explained herein.

22 **I. BACKGROUND**

23 Appellant Helen Zembal is the debtor in the underlying bankruptcy proceeding, 09-
24 23028-KAO (W.D. Wash.). In the spring of 2007, Zembal's husband, Donald Green,
25 approached Christ Sieritis and asked if he was interested in participating in a joint venture to
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ORDER
PAGE - 1

1 purchase, develop, and sell real estate. (Sieritis Decl. ¶ 4 (Ex. A-16).) On May 31, 2007, Green
2 and Sieritis signed a venture agreement detailing the terms of the venture. (Sieritis Decl. Ex. A
3 (Ex A-16).) The venture began to take on debt through the Summer and Fall of 2007, and by
4 the end of October 2007, the venture had failed. (Green Decl. ¶ 11 (Ex. A-15).) On October 10,
5 2008, Sieritis filed a suit in King County Superior Court against Zembal; Green; Bancorp,
6 LLP; Sieritis & Green Development, LLC; and Family First Mortgage Corp., Cause No. 08-2-
7 34975-6 SEA.

8 On October 25, 2009, approximately one year after commencement of the suit, Green
9 individually filed for Chapter 13 Bankruptcy, Cause No. 09-21155-SJS. On December 2, 2009,
10 Sieritis' lawyer, Scott Espiritu filed a notice of appearance in Green's bankruptcy, listing his
11 contact information as follows:

12 Inlee Best Doezie & Ryder, P.S.
13 Attn: Scott L Espiritu
14 777 108th Avenue Northeast, Suite 1900
Bellevue, Washington 98004

15 On December 10, 2009, Zembal individually filed for Chapter 7 Bankruptcy, Cause No. 09-
16 23028-KAO. Zembal identified Sieritis as an unsecured creditor on her bankruptcy petition as
17 follows:

18 Christ M. Cieritis
19 C/O Inslee Best
20 777 108th Ave NE Suite 1900
Bellevue, WA 98009-9016

21 (Schedule F (Ex. A-1).) This address is incorrect in two ways. First, Sieritis' name is spelled
22 with an "S" not a "C," and second, the zip code of Inslee Best' offices is 98004, not 98009.¹ In
23 addition, this address does not mention Espiritu's name.

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26 ¹ Inslee Best maintains a P.O. Box with a zip code of 98009, but Zembal did not
reference the P.O. Box in the address.

1 The deadline for objection to Zembal's discharge was March 15, 2010. (Order 3–4 (Ex.
2 A-22).) Zembal received her discharge on March 16, 2010. (Order (Ex. A-7).) Sieritis then
3 claimed he had never received notice of Zembal's bankruptcy and requested that Zembal
4 stipulate to an extension of the deadline to file an objection to discharge. (Espiritu email (Ex.
5 A-9: at Ex. U).) Zembal declined. On March 19, 2010, Sieritis filed a motion to extend
6 deadline for filing objection to discharge and consolidate adversary proceedings, which United
7 States Bankruptcy Judge Karen A. Overstreet granted on April 6, 2010. (Order (Ex. A-18).) On
8 May 21, 2010, Judge Overstreet denied Zembal's motion for reconsideration. (Order (Ex. A-
9 22).) his appeal follows.

10 **II. STANDARD OF REVIEW**

11 On appeal, a bankruptcy judge's "[f]indings of fact, whether based on oral or
12 documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be
13 given to the opportunity of the bankruptcy court to judge the credibility of the witnesses."
14 FED. R. BANKR. P. 8013; *see also In re Dill*, 731 F.2d 629, 631 (9th Cir. 1984). A bankruptcy
15 court's conclusions of law are reviewed *de novo*. *In re Dill*, 731 F.2d at 631.

16 **III. DISCUSSION**

17 Under the Federal Rules of Bankruptcy Procedure, proof of proper mailing creates a
18 rebuttable presumption of notice of bankruptcy. *In re Bucknum*, 951 F.2d 204, 207 (9th Cir.
19 1991) ("Mail that is *properly* addressed, stamped and deposited into the mails is presumed to
20 be received by the addressee.") (emphasis added) The burden is on the debtors to use
21 reasonable diligence in completing their schedules and lists. *In re Fauchier*, 71 B.R. 212, 215
22 (B.A.P. 9th Cir. 1987). Once the presumption is determined to apply, it can only be rebutted by
23 clear and convincing evidence that mailing was not accomplished. *Bucknum*, 951 F.2d at 207.
24 The presumption is generally not rebutted by an affidavit that notice was not received. "If a
25 party were permitted to defeat the presumption of receipt of notice resulting from the
26 certificate of mailing by a simple affidavit to the contrary, the scheme of deadlines and bar

1 dates under the Bankruptcy Code would come unraveled. For this reason, an allegation that no
2 notice was received does not, by itself, rebut the presumption of proper notice.” *In re Ricketts*,
3 80 B.R. 495, 497 (B.A.P. 9th Cir. Cal. 1987).

4 In her order denying a motion for reconsideration, Judge Overstreet made one
5 important finding of fact, and one important conclusion of law. First, she found that Zembal
6 had not properly listed Sieritis’s information: “[T]he address used for Mr. Sieritis in the
7 Debtor’s matrix was insufficient. Mr. Sieritis’ name was not spelled correctly, Mr. Espiritu was
8 not mentioned, and the incorrect zip for the firm was used.” (Order 5 (Ex. A-22).) There is no
9 indication that this finding was erroneous, and the Court will abide by it.

10 Second, Judge Overstreet determined that the presumption of notice should not apply in
11 light of these deficiencies. Reviewing this conclusion *de novo*, the Court agrees. As detailed
12 above, the presumption of notice only applies if a debtor provides proper contact information
13 for a creditor. Zembal offers no compelling justification for the misspellings and omissions in
14 the address.

15 The bankruptcy court correctly determined that the presumption of notice never applied
16 in this case.

17 **IV. CONCLUSION**

18 For the foregoing reasons, the decision of the bankruptcy court is AFFIRMED. The
19 Clerk is DIRECTED to send a copy of this Order to the Bankruptcy Court and to CLOSE this
20 case.

21 DATED this 9th day of November, 2010.

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25 John C. Coughenour
26 UNITED STATES DISTRICT JUDGE