

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
GLOBAL LINK TELECOM)	Case No. 99-3923 (MFW)
CORPORATION, et al.,)	
)	(Jointly Administered)
Debtors.)	

MEMORANDUM OPINION¹

This matter is before the Court on the Motion of the Global Link Liquidating Trust ("the Trust") for an Order Extending Time to Serve Summonses and Complaints in Certain Adversary Proceedings. The Motion was opposed by several of the Defendants in the Adversary Proceedings.² At the hearing held on the Motion on October 21, 2002, we stated our intention to deny the Motion and asked the Defendants to submit a form of order to that effect. After review of the facts and law in this area, we reconsider that decision and grant the Motion.

I. FACTUAL BACKGROUND

This case was commenced by the filing of voluntary petitions under chapter 11 of the Bankruptcy Code on October 28, 1999, by Global Link Telecom Corporation, GTS Holding Corp., Inc.,

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, which is made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014.

² The objecting Defendants are: AT&T Corp., Sprint International Communications Corporation, and Lockheed Martin Global Telecommunications, Inc.

TelTime, Inc., Network Services System, Inc., Network Services System, L.P., GTS Marketing, Inc., Global Telecommunications Solutions, L.P., Networks Around the World, Inc., and Centerpiece Communications, Inc. (collectively "the Debtors"). The Debtors sold substantially all their assets with Court approval on April 1, 2000, and on September 27, 2001, their liquidating plan of reorganization was confirmed. Pursuant to the Plan, the remaining assets of the Debtors, including the right to pursue avoidance actions, were transferred to the Trust.

On or about October 29, 2001, in order to meet the statute of limitations, the Debtors filed 25 preference actions. Those cases were subsequently assigned to the Trust pursuant to the confirmed plan. However, neither the Debtors nor the Trust served the Complaints or the Summons and Notices on the Defendants. Instead, on October 3, 2002, the Trust filed the instant Motion seeking an extension of time to serve the Complaints. Objections to the Motions were filed and a hearing was held on October 21, 2002.

II. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (F) and (O).

III. DISCUSSION

The Trust's Motion is premised on Rule 4(m) of the Federal Rules of Civil Procedure, which is made applicable to bankruptcy adversary proceedings by Rule 7004(a) of the Federal Rules of Bankruptcy Procedure and provides:

(m) Time Limit for Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

The Third Circuit has explained the correct analysis that a Court must conduct in considering whether to extend the time to serve a complaint under Rule 4(m) in Petrucci v. Bohringer and Ratzinger, GmbH, 46 F.3d 1298 (3d Cir. 1995):

We hold that as a result of the rule change which led to Rule 4(m), when entertaining a motion to extend time for service, the district court must proceed in the following manner. First, the district court should determine whether good cause exists for an extension of time. If good cause is present, the district court must extend the time for service and the inquiry is ended. If, however, good cause does not exist, the court may in its discretion decide whether to dismiss the case without prejudice or extend time for service.

46 F.3d at 1305.

At the hearing on the Motion, we erroneously ended our consideration after the first prong of the test. Because we found that the Trust had not established good cause for the delay in service of process, we concluded that we were bound to deny the motion for extension. However, after review of the Third Circuit law in this area, we conclude that we were wrong in ending our consideration at that point. We, therefore, reconsider our decision³ and, after exercising our discretion, determine that it is appropriate to grant the Motion.

A. Good Cause

At the hearing, counsel for the Trust asserted that good cause existed for an extension of time to serve the Complaints. Counsel asserted that once the Trust took control of the adversaries it was unable to get the cooperation of the Debtors and their former employees and officers to obtain the appropriate contact person at the Defendants on whom service could be made. Further, it asserted that many of the relevant documents had gone

³ Courts have discretion to sua sponte reconsider their rulings. See, e.g., In re Kirwan, 164 F.3d 1175, 1177 (8th Cir. 1999) (holding the "court's broad remedial powers" allow reconsideration sua sponte); In re Creative Goldsmiths, 178 B.R. 87, 90-91 (Bankr. D. Md. 1995) (Federal Rules 59(e) and 52(b) are authority for sua sponte reconsideration); In re Trans-Eagle Corp., 244 B.R. 146, 148 (Bankr. N.D. Cal. 1999) (Federal Rule 60(b) is authority for sua sponte reconsideration); In re Chetto, 40 Bankr. Ct. Dec. 10, 2002 Bankr. LEXIS 1109 (Bankr. N.D. Ill.) ("courts have the inherent power to reconsider rulings until a final judgment is entered").

with the buyer of the assets or were stored in a warehouse. The Trust asserted, therefore, that good cause existed for granting the requested extension.

However, we were unconvinced of this. The objecting Defendants noted that all of them are "household" names and that a simple search of corporate records or the internet would have revealed their addresses. In fact, Lockheed noted that it is incorporated in Delaware and has an agent for service of process here. Further, the objecting Defendants had either filed proofs of claim, an entry of appearance, or were listed on the Debtors' Schedules filed in this case. Therefore, a mere review of the file, docket or claims docket in this case would have revealed their addresses and contact persons. The Trust presented no evidence that such a search was conducted or even that any efforts were undertaken to obtain the correct addresses for the Defendants. Since only 25 adversaries were filed in this case, such a search would not have been difficult or burdensome. Therefore, we conclude that good cause has not been shown by the Trust for the delay in effecting service of process in this case.

B. Exercise of Discretion

The Third Circuit has stated, however, that the Court must consider, if good cause has not been shown, whether an extension of time to serve process is nonetheless warranted. In this

consideration, the Court may consider whether the statute of limitations has run thereby barring any refiling if the case is dismissed. Id. However, this need not be dispositive. Id. at 1306.

In this case, since the Debtors waited until the last day to file the adversaries, dismissal would bar their refiling. The Trust was created to liquidate the remaining assets for the benefit of all creditors. Dismissing the adversaries would result in the loss of a potential distribution to creditors from those actions. Therefore, we conclude that, in the exercise of our discretion, the Trust should be given an extension of time to serve the adversaries.

All the objecting Defendants assert they will be prejudiced by an extension. However, other than Lockheed, no one presented more than a bare assertion on this point. Since all the objecting Defendants were aware of the bankruptcy, and presumably aware that they had received payment from the Debtors within the preference period, they should have anticipated the preference action being brought. Lockheed asserts that its business which received the preference has been sold and its records may be unavailable to it. We find this insufficient to cause us to deny the Motion but may consider it in connection with a Motion to Dismiss the adversary.


IV. CONCLUSION

For the reasons set forth above, we grant the Motion of the Trust for an extension of the time to serve the adversaries.

An appropriate Order is attached.

BY THE COURT:

Dated: October 22, 2002



Mary F. Walrath
United States Bankruptcy Judge


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O R D E R

AND NOW, this 22ND day of OCTOBER, 2002, upon consideration of the Motion of the Global Link Liquidating Trust for an Order Extending Time to Serve Summons and Complaint in Certain Adversary Proceedings and the Responses thereto, it is hereby ORDERED that the Motion is GRANTED.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

SERVICE LIST

Steven K. Kortanek, Esquire
KLEHR HARRISON HARVEY BRANZBURG & ELLERS LLP
919 Market Street
Suite 1000
Wilmington, DE 19801
(Counsel for Global Link Liquidating Trustee)

John Greco, Esquire
BETANCOURT, VAN HEMMEN & GRECO
114 Maple Avenue
Red Bank, NJ 07701
(Counsel for Global Link Liquidating Trustee)

William D. Sullivan, Esquire
Charles J. Brown, III, Esquire
ELZUFON, AUSTIN, REARDON, TARLOV
& MONDELL, P.A.
300 Delaware Avenue
Suite 1700
Wilmington, DE 19899
(Counsel for AT&T Solutions)

Vincent A. D'Agostino, Esquire
LOWENSTEIN SANDLER, P.C.
65 Livingston Avenue
Roseland, New Jersey 07068
(Counsel for AT&T Solutions)

Thomas D. Walsh, Esquire
McCARTER & ENGLISH, LLP
919 Market Street, Suite 1600
P.O. Box 111
Wilmington, DE 19899
(Counsel for Sprint Int'l Communications Corp.)

Lisa S. Bonsall, Esquire
McCARTER & ENGLISH, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
(Counsel for Sprint Int'l Communications Corp.)

Adam G. Landis, Esquire
Kerri K. Mumford, Esquire
KLETT ROONEY LIEBER & SCHORLING
The Brandywine Building
1000 West Street
Suite 1410
Wilmington, DE 19801
(Counsel for Lockheed Martin Global Telecommunications,
Comsat Corporation, and Comsat Mexico, S.A.)

Thomas O. Bean, Esquire
NUTTER McCLENNAN & FISH, LLP
155 Seaport Boulevard
Boston, MA 02210-2604
(Counsel for Lockheed Martin Global Telecommunications,
Comsat Corporation, and Comsat Mexico, S.A.)

OFFICE OF THE UNITED STATES TRUSTEE
J. Caleb Boggs Federal Building
844 King Street
Lockbox 35
Suite 2313
Wilmington, DE 19801