

24-2090
Ryniker v. Sumec Textile Co.

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 -----

4 August Term, 2024

5 (Argued: May 21, 2025

Decided: May 27, 2026)

6 Docket No. 24-2090

7 _____
8 BRYAN RYNIKER, in his capacity as Litigation Administrator of the
9 Post-Confirmation Estates of Décor Holdings, Inc.,

10 *Plaintiff-Appellant,*

11 - v. -

12 SUMEC TEXTILE COMPANY LIMITED,

13 *Defendant-Appellee.*
14 _____

15 Before: KEARSE, JACOBS, and LOHIER, *Circuit Judges.*

16 Appeal by plaintiff bankruptcy litigation administrator from a 2024
17 judgment of the United States Bankruptcy Court for the Eastern District of New York

1 (Robert E. Grossman, *Judge*), granting defendant creditor's motion to dismiss this
2 adversary proceeding brought by the administrator to recover preferential payments
3 made by the bankruptcy debtors to the creditor in the 90-day period before the
4 debtors filed for bankruptcy. Although in 2021 a default judgment had been entered
5 and the bankruptcy judge denied the creditor's motion to vacate for allegedly
6 insufficient service of process, finding that sufficient service had been made on the
7 creditor's subagent who had filed the creditor's proof of claim in the bankruptcy
8 proceeding, the default judgment was vacated on appeal by the United States District
9 Court for the Eastern District of New York, which found that the creditor had not
10 expressly or impliedly conferred on its agent or the subagent any authority to accept
11 service of process on behalf of the creditor. On remand from the district court, the
12 bankruptcy court in 2024 dismissed the adversary proceeding with prejudice. On this
13 direct appeal from the bankruptcy court's 2024 judgment, the administrator seeks
14 reinstatement of the default judgment, contending principally that the district court
15 erred in ruling that the subagent on which the adversary proceeding complaint was
16 served lacked authority to accept service of process on behalf of the creditor.

17 We conclude that documents in the record, including two that were part
18 of the creditor's proof of claim in the bankruptcy proceeding, establish that the

1 creditor conferred authority on an agent and a subagent to file its proof of claim and
2 to do all that was appropriate in order to collect from the debtors the "full amount"
3 of the \$3,029,719.52 claim, and thereby implicitly authorized the agent and subagent
4 to do all that was appropriate to resist the administrator's reduction of that sum, as
5 could occur in a bankruptcy adversary proceeding. We accordingly vacate the order
6 of the district court that vacated the bankruptcy court's denial of Sumec's motion to
7 vacate the default judgment against it, and we vacate the judgment of the bankruptcy
8 court that, on remand from the district court, dismissed the adversary proceeding.
9 We remand to the bankruptcy court for further proceedings.

10 Vacated and remanded for further proceedings.

11 Noah Weingarten, New York, New York (Loeb & Loeb,
12 New York, New York; Schuyler G. Carroll, Manatt,
13 Phelps & Phillips, New York, New York, *on the brief*),
14 *for Plaintiff-Appellant.*

15 Frederick B. Rosner, Wilmington, Delaware (The Rosner
16 Law Group, Wilmington, Delaware, *on the brief*), *for*
17 *Defendant-Appellee.*
18

19 KEARSE, *Circuit Judge:*

20 Plaintiff Bryan Ryniker, as bankruptcy litigation administrator
21 ("Litigation Administrator" or "Administrator") of the Post-Confirmation Estates of

1 Décor Holdings, Inc., and its debtor affiliates (collectively "Décor" or "Debtors"),
2 appeals from a 2024 judgment of the United States Bankruptcy Court for the Eastern
3 District of New York (Robert E. Grossman, *Judge*), granting the motion of defendant
4 Sumec Textile Company Limited ("Sumec") to dismiss this adversary proceeding
5 brought by Ryniker to recover preferential payments made to Sumec by the Debtors
6 in the 90-day period before they filed for bankruptcy. In 2021, a default judgment had
7 been entered in favor of Ryniker, and the bankruptcy judge denied Sumec's motion
8 to vacate for allegedly insufficient service of process, finding that sufficient service
9 had been made on Sumec's subagent who had filed Sumec's proof of claim in the
10 bankruptcy proceeding. The default judgment was vacated on appeal by the United
11 States District Court for the Eastern District of New York (Gary R. Brown, *Judge*),
12 which concluded that Sumec had not expressly or impliedly conferred on its agent
13 or the subagent any authority to accept service of process on behalf of Sumec. On
14 remand from the district court, the bankruptcy court in 2024 dismissed the adversary
15 proceeding with prejudice. On this direct appeal from the bankruptcy court's 2024
16 judgment, Ryniker seeks reinstatement of the default judgment, contending
17 principally that the district court erred in ruling that the subagent on which the
18 adversary proceeding complaint was served lacked authority to accept service of

1 process on behalf of Sumec.

2 We conclude that documents in the record, including two that were part
3 of Sumec's proof of claim in the bankruptcy proceeding, establish that Sumec
4 conferred authority on an agent and a subagent to file Sumec's proof of claim and to
5 do all that was appropriate in order to collect from Décor the "full amount" of Sumec's
6 \$3,029,719.52 claim, and thereby implicitly authorized the agent and subagent to do
7 all that was appropriate to resist the Administrator's reduction of Sumec's recovery,
8 as could occur in a bankruptcy adversary proceeding. Accordingly, we vacate the
9 order of the district court that vacated the bankruptcy court's denial of Sumec's
10 motion to vacate the default judgment against it; and we vacate the judgment of the
11 bankruptcy court which, on remand from the district court, dismissed the adversary
12 proceeding. We remand to the bankruptcy court for further proceedings.

13 I. BACKGROUND

14 The events leading to the present appeal have been addressed in several
15 judicial orders or opinions, familiarity with which is assumed. *See Ryniker v. Sumec*
16 *Textile Co.*, Adv. Pro. No. 20-08130 (Bankr. E.D.N.Y. Nov. 23, 2021) (Bankruptcy Court

1 Supplemental Findings of Fact and Conclusions of Law with regard to the denial of
2 Sumec's motion to vacate the default judgment) ("*Ryniker I*"); *Sumec Textile Co. v.*
3 *Ryniker*, No. 21-CV-6725, 2023 WL 170595 (E.D.N.Y. Jan. 12, 2023) (District Court
4 Order vacating bankruptcy court order that denied Sumec's motion to vacate default
5 judgment, and remanding for further proceedings) ("*Ryniker II*"); *Ryniker v. Sumec*
6 *Textile Co.*, 86 F.4th 1021 (2d Cir. 2023) (dismissing appeal from *Ryniker II* for lack of
7 appellate jurisdiction) ("*Ryniker III*"); *Ryniker v. Sumec Textile Co.*, Adv. Pro.
8 No. 20-08130 (Bankr. E.D.N.Y. Mar. 5, 2024) (Bankruptcy Court Order Granting
9 Defendant's Motion To Dismiss) ("*Ryniker IV*").

10 *A. The Early Bankruptcy Filings*

11 On February 12, 2019, Décor and its debtor affiliates, which were sellers
12 of decorative fabric, filed a voluntary petition for bankruptcy under Chapter 11 of the
13 Bankruptcy Code. They listed Sumec, a Nanjing, China-based textile manufacturer,
14 as their second-largest unsecured creditor.

15 Sumec held an export credit insurance policy with the State-owned
16 China Export & Credit Insurance Corporation, also known as "Sinosure." (*See*
17 Declaration of Sumec senior manager Yan Gu dated October 1, 2021 ("*Gu Declaration*"

1 or "Sumec's Gu Decl."), ¶¶ 1, 7-8.) "On or about February 27, 2019," Sumec submitted
2 an insurance claim to Sinasure "for the unpaid balance owed to [Sumec] by the
3 Debtors." (*Id.* ¶ 9.)

4 Thereafter, Sumec executed a Collection Trust Deed that authorized
5 Sinasure to collect "the full amount" of the debt on Sumec's behalf. It stated as
6 follows:

7 Owing to and in connection with the protracted default by
8 [the Debtors] in payment under the Sales Contract or [certain
9 enumerated invoices] signed between [Sumec] and [the Debtors],
10 we, SUMEC . . . , hereby *confirm our agreement and authorization to*
11 *[Sinasure], of the full rights for collection, on our behalf,* against [the
12 Debtors] for *the full amount* of USD 3029719.52 . . . U.S. DOLLARS
13 THREE MILLION AND TWENTY-NINE THOUSAND SEVEN
14 HUNDRED AND NINETEEN CENTS FIFTY-TWO ONLY

15 We further confirm *our grant to [Sinasure] the full power in*
16 *exercising such rights and remedies in our or its own name* and give
17 any assistance as it may require of us from time to time.

18 (Sumec Collection Trust Deed (or "Collection Trust") (A.149) (emphases added).)

19 On March 4, 2019, Sinasure hired a collection agency in the United States,
20 Brown & Joseph, LLC ("B&J"), to collect on the Décor debt to Sumec. Sinasure
21 executed a document titled Trust Deed and Letter of Instruction ("Sinasure
22 Instructions to B&J" or "Instructions") stating, in pertinent part, as follows:

1 We, [Sinasure], hereby confirm our instruction to Brown &
2 Joseph, LLC for debt collection against [Décor] who has defaulted in
3 payment to our client SUMEC

4 The total amount hereby instructed is USD 3,039,806.24 (Say
5 US Dollar Three Million Thirty-Nine Thousand Eight Hundred
6 and Six and Twenty-Four Cents) plus the interest accrued.

7 We further confirm to grant Brown & Joseph, LLC the full power
8 in exercising such rights and remedies in our or its own name for the
9 amicable debt collection and commit ourselves to render any
10 assistance as it may reasonably require of us from time to time.

11 (A.151-52 (emphases added).)

12 On April 16, 2019, B&J filed a claim in the Décor bankruptcy for
13 \$3,029,719.52 on behalf of "Sumec" as the creditor. (See A.144-340.) The official Proof
14 of Claim form was signed by "Don Leviton," identified as "Legal Counsel [at] Brown
15 & Joseph, LLC," and as "the creditor's attorney or authorized agent." (A.146.) In
16 addition to the copies of invoices attached to the official form, the Proof of Claim
17 included copies of the Sumec Collection Trust Deed and the Sinasure Instructions to
18 B&J. (See A.149-52.)

19 B. *The Record in the Present Adversary Proceeding*

20 On August 25, 2020, Ryniker commenced the present adversary

1 proceeding against Sumec, filing a "COMPLAINT TO AVOID AND RECOVER
2 TRANSFERS PURSUANT TO 11 U.S.C. §§ 547, 548, AND 550 AND TO DISALLOW
3 CLAIMS PURSUANT TO 11 U.S.C. § 502." ("Adversary Complaint" or "Complaint"
4 (A.341) (emphasis added).) Ryniker sought to recover from Sumec a total of
5 \$693,048.84 of preferential payments that Sumec had received from the Debtors
6 within 90 days of their filing for bankruptcy.

7 Sumec's Proof of Claim in the bankruptcy proceeding, in specifying
8 "[w]here should notices to the creditor be sent," identified "Brown & Joseph, C/O Don
9 Leviton, PO Box 59838, Schaumburg, Illinois, 60159." (A.144.) The Proof of Claim
10 also listed a "[c]ontact email" address for Leviton. (*Id.*)

11 On August 28, 2020, the Administrator's counsel or assistants (the
12 "Ryniker Staff" or "Staff") sent the Adversary Complaint and a summons by United
13 States Postal Service First Class Mail, postage prepaid, to "Sumec Textile Company
14 Ltd., c/o Brown Joseph, Attn: Don Leviton, P.O. Box 59838, Schaumburg, Illinois,
15 60159." (A.353-54.) On August 31, 2020, the Ryniker Staff sent courtesy copies of the
16 Adversary Complaint and summons by email to the Leviton email address that was
17 provided in Sumec's Proof of Claim. (*See id.*)

18 According to emails in the record, Leviton--B&J's corporate counsel--

1 received these electronic documents from Ryniker, as well as a request to confirm
2 receipt of the hard copies. (See A.1042.) Leviton forwarded the documents to Peter
3 Geldes, the "Claims & Investigations Manager" for B&J, on September 2, 2020.
4 (A.1041.)

5 On September 3, 2020, Geldes sent Ryniker an email stating that, in
6 addition to "look[ing] into" whether hard copies of the Complaint and summons had
7 been received, "I am also *reviewing with . . . our client and the creditor*, as it is my
8 understanding that any payments made were paid in the ordinary course." (*Id.*
9 (emphases added).) To that end, Geldes asked whether Ryniker had a "spreadsheet
10 regarding payment history . . . for Sumec to complete." (*Id.*) On November 9, 2020,
11 Geldes sent an email to the Ryniker Staff noting that he had not received a response
12 to his September 3 email and stating that, "[a]s expressed, Sumec is under the
13 impression that the payments received from Decor Holdings, Inc., et al., were made
14 in the ordinary course of business and are not subject to preference action." (A.1040.)
15 The Ryniker Staff sent the requested spreadsheet, stating that Ryniker was "happy to
16 provide Sumec with an extension of time to respond to the Complaint until December
17 15." (*Id.*) On November 11, 2020, Geldes responded that he would "work on getting
18 Sumec to provide the analysis by the December 15th deadline." (A.1039-40.)

1 Ryniker received no response before that deadline. In a December 16,
2 2020 email to the Ryniker Staff, Geldes stated: "Sumec has asked that I reach out and
3 clarify if there is a settlement offer to resolve the preference claim." (A.1039.) Ryniker
4 telephoned an offer in response, which Geldes then conveyed to his "client"; but as
5 of January 18, 2021, Geldes had received no "response or decision." (A.1038-39.)

6 Between December 2020 and May 2021, the bankruptcy court scheduled,
7 convened, and adjourned several conferences. No one attended on behalf of Sumec.

8 On February 11, 2021, the Ryniker Staff informed Geldes that the
9 bankruptcy court was eager for adversary proceeding "matters to move along" and
10 thus would "not permit any further extension of the time to answer." (A.1060.)
11 Geldes responded that he had "relayed" this information to his "client," but again
12 indicated that he had received no response. (A.1059.) Unhappy with the further
13 delay, Ryniker on February 18, 2021, threatened to--and on February 24, 2021, did--
14 file a request for entry of default. A month later, on March 25, the bankruptcy court
15 formally noted Sumec's default on the docket. On March 30, Geldes emailed Ryniker,
16 stating that he "still ha[d] not heard anything from Sumec." (A.1064.) Geldes also
17 stated that he "believe[d]" it had been "discussed previously" but wanted to "reiterate"
18 and "re-clarify" that "Brown & Joseph is not authorized to accept service on

1 Sumec's behalf." (*Id.*)

2 On May 21, 2021, Ryniker moved for entry of a default judgment. He
3 provided proof of service of the summons and Complaint on B&J, noting that copies
4 of the Complaint and summons had been sent to the mailing and electronic mailing
5 addresses stated in Sumec's Proof of Claim in the Décor bankruptcy case. On July 19,
6 2021, there still having been no appearance or a response by Sumec, the bankruptcy
7 court granted Ryniker's motion, entering a default judgment against Sumec for
8 \$693,048.84 plus interest.

9 1. *Sumec's Motion To Vacate the Default Judgment*

10 On October 1, 2021, Sumec moved to reopen the adversary proceeding
11 and to vacate the default judgment, asserting a need "to avoid an injustice, and permit
12 SUMEC to present its meritorious defenses and litigate this adversary proceeding on
13 the merits." (Sumec Motion To Reopen Adversary Proceeding and Vacate Entry of
14 Default Judgment ("Sumec Motion To Vacate" or "Motion") at 2.) Sumec contended
15 that the judgment was void for lack of service of process sufficient to give the court
16 personal jurisdiction over Sumec. (*See* Motion at 18-19.) It also argued that, if the
17 judgment were vacated, it had meritorious defenses to present. In support of the

1 Motion, Sumec submitted the Gu Declaration, which it quoted and paraphrased for
2 its assertions as to facts.

3 As will be discussed in Part II.B. below, after noting that Sumec had
4 submitted its insurance claim to Sinosure for the Décor unpaid debt in February 2019
5 (see Sumec's Gu Decl. ¶ 9), Gu's discussion of Sumec's connection with the Décor
6 bankruptcy included the following:

7 10. On October 15, 2019, SUMEC and SINOSURE settled on
8 the Insurance Claim. SINOSURE agreed to pay SUMEC a portion
9 of the amount claimed in full satisfaction of its Insurance Claim.
10 *Following payment of its Insurance Claim, SUMEC elected not to*
11 *pursue the Debtors for the balance owed and did not file a proof of claim*
12 *in these cases.*

13 **Following Payment on the Insurance Claim, SINOSURE was**
14 **Subrogated to the Rights of SUMEC and Sought to Collect the**
15 **Debt Directly from the Debtors.**

16 11. . . . As required by the Insurance Policy, on October
17 18, 2019, SUMEC executed the Payment Receipt and Subrogation
18 (the "Subrogation Agreement"), which provides as follows:

19 In consideration of having received the payment, we
20 [SUMEC] hereby agree to *assign, transfer and subrogate* to
21 you [SINOSURE], to the extent of your interest, *all our rights*
22 *and remedies* in and in respect of the subject matter insured,
23 and to grant you full power and give you any assistance
24 you may reasonably require of us in the exercise of such
25 rights and remedies *in our or your name.*

1 Significantly, the Subrogation Agreement authorizes
2 SINOSURE to collect in SUMEC's name.

3 12. SUMEC also executed a certain Collection Trust Deed
4 for the purpose of authorizing SINOSURE to collect the Debt.
5 Significantly, the scope of the Collection Trust Deed is *limited*. It
6 provides as follows:

7 Owing to and in connection with the protracted default by
8 [the Debtors] in payment under the Sales Contract or
9 [certain enumerated invoices] signed between [SUMEC]
10 and [the Debtors], we, [SUMEC], hereby confirm our
11 agreement and authorization to [SINOSURE], of the full
12 rights for collection, *on our behalf*, against [the Debtors] for
13 the full amount of USD 3029719.52 . . . plus the interest
14 accrued.

15 We further confirm our grant to [SINOSURE] the full
16 power in exercising such rights and remedies *in our or its*
17 *own name* and give any assistance as it may require of us
18 from time to time.

19 The Collection Trust Deed, however, does not authorize
20 SINOSURE to accept service of a summons or complaint on
21 SUMEC's behalf or act in any way for SUMEC.

22 **SINOSURE, not SUMEC, Sought to Collect the Debt it was**
23 **owed as Subrogee[.]**

24 13. As noted, SUMEC took no steps to collect the balance
25 it was owed by the Debtors and considered the matter closed.
26 SINOSURE, however, sought to collect the *debt it now was owed*
27 *having paid SUMEC* on its Insurance Claim. *At all relevant times,*
28 *SINOSURE*, acting independently of SUMEC, and without notice
29 or reporting to, or consulting with, SUMEC, *sought to collect the*

1 *Debt it now was owed as subrogee.*

2 (Sumec's Gu Decl. ¶¶ 10-13 (bolding in original; except in ¶ 11, and "limited" in ¶ 12,
3 all italics ours).)

4 The Gu Declaration acknowledged the agency relationship between
5 Sinosure and B&J:

6 14. To assist in debt collection, SINOSURE hired the
7 Detroit-based collection agency Brown & Joseph LLC ("B&J"). The
8 scope of B&J's authority and services is set forth and limited by
9 the Trust Deed and Letter of Instruction dated March 4, 2019,
10 which provides:

11 *"We [SINOSURE] hereby confirm our instruction to*
12 *Brown & Joseph, LLC for debt collection against [the Debtors]*
13 *who has [sic] defaulted in payment to our client [SUMEC]*

14 The total amount hereby instructed is USD
15 3,039,806.24 (Say US Dollar Three Million Thirty-Nine
16 Thousand Eight Hundred and Six and Twenty-Four Cents)
17 plus the interest accrued.

18 *We further confirm to grant Brown & Joseph, LLC the full*
19 *power in exercising such rights and remedies in our*
20 *[SINOSURE's] or its own name for the amicable debt*
21 *collection and commit ourselves to render any assistance as*
22 *it may reasonably require of us from time to time.*

23 There is no language in the Trust Deed and Letter of Instruction
24 that authorizes B&J to accept service of process on behalf of
25 SUMEC.

1 15. *Between the time the Complaint was filed and entry of the*
2 *Default Judgment, SUMEC had no contact with B&J, and certainly*
3 *did not authorize B&J to take any action on its behalf or represent it in*
4 *any way, including preparing or filing a proof of claim for SUMEC in*
5 *the Debtors' cases. SUMEC did not sign or file any claim and B&J*
6 *did not sign in any representative capacity for SUMEC. As noted,*
7 *SUMEC elected not to pursue the Debtors following payment on*
8 *its Insurance Claim.*

9 16. *However, B&J was hired by SINOSURE to collect the Debt.*
10 *Toward that end, B&J prepared and filed a proof of claim on account of*
11 *the Debt (the "Proof of Claim") in SUMEC's name. It did so because it*
12 *was acting at the bequest [sic] of SINOSURE and SINOSURE was*
13 *authorized to use SUMEC's name to collect the Debt.*

14 17. SUMEC did not sign, or have any involvement with
15 preparing, reviewing or filing the Proof of Claim. SUMEC never
16 saw the Proof of Claim before it was filed and never was asked to
17 sign the proof of claim. SUMEC never authorized B&J to file the
18 Proof of Claim and was not even aware that B&J had filed a Proof
19 of Claim in SUMEC's name. SUMEC for the first time received a
20 copy of the Proof of Claim *from B&J* on September 20, 2021
21 (Beijing Time).

22 (Sumec's Gu Decl. ¶¶ 14-17 (emphases ours; footnotes and original emphases
23 omitted).)

24 The Gu Declaration went on to, *inter alia*, reiterate that "SUMEC never
25 authorized B&J or SINOSURE to accept service of process on its behalf in this
26 adversary proceeding," and it attached Geldes's March 30, 2021 email to Ryniker,
27 which stated that B&J had not been authorized to accept service of process for Sumec

1 (and which suggested that Ryniker had been so informed previously). (*See id.* ¶ 22.)
2 Gu also stated that "[t]o date"--*i.e.*, October 1, 2021--"neither SINOSURE nor B&J has
3 provided a copy of the Summons and Complaint to SUMEC." (*Id.* ¶ 23.) He stated
4 that "[w]ithout knowledge or receipt of the Summons and Complaint, the Request for
5 Default or the Motion for Default Judgment, SUMEC could not and, therefore, did
6 not, respond to any pleading, appear or defend itself in this matter." (*Id.* ¶ 30.)
7 However, having "learn[ed] of the Default Judgment"--but without having seen the
8 Complaint--"on September 3, 2021, SUMEC requested SINOSURE to relay, through
9 B&J, a settlement offer to [Ryniker]." (*Id.* ¶ 36.)

10 2. *Ryniker's Opposition to Sumec's Motion To Vacate*

11 In opposition to Sumec's motion to vacate the default judgment, Ryniker
12 maintained that Sumec had been properly served through service on Don Leviton,
13 the agent named in the Proof of Claim for receipt of notices, at the address to which
14 the Proof of Claim said such notices were to be sent. (*See* Litigation Administrator's
15 Response and Opposition to Sumec's Motion To Vacate ("Administrator's
16 Response").) He also argued that there could be "no question that Sumec timely
17 received the Summons and Complaint" (A.791), as the record showed that Leviton

1 forwarded the summons and Complaint to B&J's Claims and Investigations Manager
2 Geldes two days after receiving them (*see* A.1041-42).

3 Further, referring to Geldes as Sumec's "agent" (Administrator's
4 Response at 4), Ryniker stated that, following service of the Complaint,

5 Sumec's agent engaged in repeated and lengthy discussions with
6 the Litigation Administrator's counsel beginning shortly after the
7 Summons and Complaint were served and continued for months.

8 (*Id.* at 1.) And "Sumec's agent repeatedly told the Litigation Administrator's counsel
9 that Sumec *was* aware of the Adversary Proceeding and he was in regular
10 communication with Sumec." (*Id.* (emphasis in original).)

11 Ryniker attached, as Exhibits 5-8, emails between Geldes and members
12 of his Staff from August 31, 2020, to September 17, 2021. He noted that despite
13 Geldes's suggestion by email on March 30, 2021, that B&J had previously told the
14 Ryniker Staff that B&J was not authorized to receive service of process for Sumec,
15 Geldes's prior communications had indicated quite the opposite. Ryniker referred,
16 for example, to Geldes's email of September 3, 2020:

17 Rather than disclaiming either (i) his agency to act on Sumec's
18 behalf or (ii) his, Don Leviton's, or Brown & Joseph's authorization
19 to accept service of process, Mr. Geldes acted as Sumec's agent in
20 the preference action, stating:

1 Attorney Leviton forwarded your email to my
2 attention, *as well as the attachments. . . . I am also reviewing*
3 *with the [sic] our client and the creditor" "[i]n previous*
4 *instances where creditors we were representing faced*
5 *preference action suits the creditor was required to submit*
6 *a spreadsheet regarding payment history--do you have*
7 *something like that for Sumec to complete?"*

8 (Administrator's Response at 4 (emphases in Administrator's Response).) And on
9 November 9, 2020, Geldes told the Ryniker Staff that "*Sumec is under the impression*
10 *that the payments received from Décor Holdings, Inc., et al., were made in the*
11 *ordinary course of business"* (*Id.* (emphasis in Administrator's Response).)

12 C. *The Bankruptcy Court's Decision in Ryniker I*

13 The bankruptcy court denied Sumec's motion to vacate the default
14 judgment, noting that "Sumec d[id] not deny receiving notice of the filing of the
15 [Chapter 11] petition," and that there were sufficient indicia of an agency relationship
16 between Sumec and Sinasure--and a subagency relationship between Sumec and
17 B&J--with respect to Sumec's desire to collect its debt from Décor. *Ryniker I* at 2, 9-10.

18 The court noted that "Sumec expressly permitted Sinasure to use Sumec's
19 name when collecting on the debt," and that Sumec's "Collection Trust Deed states
20 that Sinasure has 'the full rights for collection, *on our behalf*, against [the Debtors] for

1 the full amount [of the debt]." *Id.* at 9-10 (quoting the Collection Trust (emphasis in
2 *Ryniker I*)). The court continued:

3 Sinosure then appointed Brown & Joseph as its subagent to
4 perform the functions that Sumec conferred upon Sinosure. This
5 subagency was reflected in the Trust Deed and Letter of
6 Instruction, which confirms that Brown & Joseph has the full
7 power to collect the debt. A subagent, acting within the scope of
8 his authority, may bind the principal as the agent may bind the
9 principal. . . . This would include the authority to file the proof of
10 claim in Sumec's name. Based on all of these factors, the Court
11 finds that service of process on Sumec at the name and address
12 listed on the proof of claim satisfied due process requirements and
13 [Bankruptcy] Rule 7004(b)(3).

14 *Id.* at 10. The bankruptcy court found that there was a clear agency relationship
15 between Sinosure and B&J in pursuit of Sumec's collection of that debt, *id.* at 9-10; that
16 because there were no reservations in Sumec's grant of authority to Sinosure, "Sumec
17 could have anticipated that Sinosure would be participating in the Debtors'
18 bankruptcy which would include the filing of a proof of claim," *id.* at 10; and that
19 Ryniker could "properly rel[y] on the address listed in the proof of claim for service
20 of the summons and complaint," *id.* at 2.

21 The court concluded that there were "sufficient indicia of agency between
22 Sumec and Sinosure to find that Sumec was properly served" in the bankruptcy
23 adversary proceeding. *Id.* at 9.

1 D. *The District Court's Vacatur of the Ryniker I Decision*

2 Sumec appealed the *Ryniker I* decision to the district court,
3 reiterating its challenges to the sufficiency of service of process. In its appellate
4 capacity, a district court is to review the bankruptcy court's factual findings for
5 clear error and its legal conclusions de novo. *See, e.g., In re Bonnanzio*, 91 F.3d
6 296, 300 (2d Cir. 1996). In a Memorandum and Order dated January 12, 2023
7 (*Ryniker II*), the district court vacated the default judgment, concluding
8 principally that Sumec had not expressly or impliedly authorized B&J to receive
9 service of process. It stated:

10 Under Bankruptcy Rule 7004(b)(3), service of process in an
11 adversary proceeding may be made, "[u]pon . . . a foreign
12 corporation . . . by mailing a copy of the summons and complaint
13 to the attention of . . . any other agent authorized by appointment
14 or by law to receive service of process." *A default judgment is void*
15 *if service was improper, regardless of whether the defendants had actual*
16 *notice. Triad Energy Corp. v. McNell*, 110 F.R.D. 382, 386 (S.D.N.Y.
17 1986). In the Second Circuit, there is a strong preference that
18 "litigation disputes be resolved on the merits, not by default."
19 *Cody v. Mello*, 59 F.3d 13, 15 (2d Cir. 1995). "[T]he extreme
20 sanction of a default judgment must remain a weapon of last,
21 rather than first, resort, which should only be imposed upon a
22 serious showing of willful default." *Davis v. Musler*, 713 F.2d 907,
23 916 (2d Cir. 1983) (citations and internal quotation marks omitted).
24 As such, "motions to vacate default judgments are to be granted
25 liberally" and "all doubts should be resolved in favor of the party
26 seeking relief." *Int'l Cargo & Sur. Ins. Co. v. Mora Textiles Corp.*,

1 No. 90 CIV. 3880 (KMW), 1991 WL 120359, at *2 (S.D.N.Y. June 21,
2 1991).

3 *Ryniker II* at *5 (emphasis added).

4 Noting that "[t]his appeal turns on whether B & J was an authorized
5 agent for service of process under Bankruptcy Rule 7004(b)(3)," *id.*, the district court
6 disagreed with the bankruptcy court's ruling that there were "sufficient indicia of
7 agency between Sumec and Sinasure to find that Sumec was properly served," *id.*
8 (quoting *Ryniker I*). The district court stated as follows:

9 An agent's authority can be actual or implied. "Actual authority is
10 created by *direct* manifestations from the principal to the agent,
11 and the extent of the agent's actual authority is interpreted in the
12 light of all circumstances" *Highland Cap. Mgmt. LP v.*
13 *Schneider*, 607 F.3d 322, 327 (2d Cir. 2010) (quoting *Peltz v. SHB*
14 *Commodities, Inc.*, 115 F.3d 1082, 1088 (2d Cir. 1997)). Here, B & J
15 lacked actual authority to accept service for Sumec because Sumec
16 never *specifically* authorized B & J to accept service on its behalf;
17 indeed, *it never even communicated with B & J prior to the entry of*
18 *default judgment*. App. 79-80, 82. See *In re Reisman*, 139 B.R. 797,
19 800 (Bankr. S.D.N.Y. 1992) (creditor's attorney lacked explicit
20 authority to accept service where the Notice of Appearance
21 executed by creditor's attorney was neither signed nor
22 acknowledged by the creditor).

23 "Apparent authority consists of two elements: (1) a
24 manifestation by the principal that the agent has authority and (2)
25 reasonable reliance on that manifestation by the person dealing
26 with the agent." *In re Kollel Mateh Efraim, LLC*, 334 B.R. 554, 560
27 (Bankr. S.D.N.Y. 2005) (citing *FDIC v. Providence College*, 115 F.3d

1 136, 140 (2d Cir. 1997)). Neither element is satisfied here. First,
2 there was no manifestation by Sumec that the *purported* subagent
3 B & J had authority to accept service of process. Sumec made no
4 direct or indirect communication with the litigation administrator
5 before the entry of default judgment. App. 79, 82. From the
6 commencement of the debtors' bankruptcy in 2019 to the entry of
7 default judgment in 2021, Sumec's only conduct was signing a
8 Collection Trust Deed which granted Sinasure the authority to
9 collect on the debt in "our [Sumec's] name or its own [Sinasure's]
10 name." App. 501. The Collection Trust Document does not
11 specifically confer the authority to accept service of process. For
12 service upon an agent to be effective, "an actual appointment for
13 the *specific* purpose of receiving process normally is expected."
14 § 1097 Service on Individuals--Delivery of Process to Agent
15 Appointed by Defendant, 4A Fed. Prac. & Proc. Civ. (Wright &
16 Miller) (4th ed.) (emphasis added).

17 *Ryniker II* at *5 ("specific" emphasized in original, all other emphases ours).

18 The district court noted that "[a]though [t]he requisite intent . . . may be
19 implied . . . from the circumstances surrounding the service upon the agent," *id.*
20 (internal quotation marks omitted),

21 *here there was no direct communication between Sumec and the*
22 *litigation administrator for over two years. Although Geldes initially*
23 *purported to act on Sumec's behalf, "[o]ne who deals with an*
24 *agent does so at his peril, and must make the necessary effort to*
25 *discover the actual scope of authority."* *General Overseas Films, Ltd.*
26 *v. Robin Int'l, Inc.*, 542 F.Supp. 684, 690 (S.D.N.Y. 1982) (citation
27 omitted).

28 *Ryniker II* at *5 (emphasis added).

1 The district court concluded, on the record before it, that Ryniker also
2 could not show that his reliance on the name and address stated in the Proof of Claim
3 was "reasonable."

4 Although initially Geldes appeared to accept service for Sumec,
5 later he unambiguously disclaimed any such authority. App. 736
6 ("I also wanted to reiterate that Brown & Joseph is not authorized
7 to accept service on Sumec's behalf. . . . We are not a law firm, we
8 are not Sumec's attorney of record, and are only an authorized
9 agent so far as the credit insurance claim that they filed is
10 concerned."). In the email chain where Geldes purportedly
11 accepted service, his email signature identified Geldes not as an
12 attorney but a "Claims & Investigations Manager" at a collection
13 agency. App. 713. Since B & J lacked actual or apparent
14 authority, B & J was not an "agent authorized by appointment or
15 by law to receive service of process" under Bankruptcy Rule
16 7004(b)(3).

17 *Ryniker II* at *6. The court concluded further that

18 under these circumstances notice was not "reasonably calculated"
19 to apprise interested parties of the action. *Mullane[v. Cent.*
20 *Hanover Bank & Tr. Co.]*, 339 U.S. [306,] 314 [(1950)]; *see also*
21 *Robinson v. Hanrahan*, 409 U.S. 38 (1972) (*notice of forfeiture*
22 *proceeding was not reasonably calculated where the state knew an*
23 *incarcerated automobile owner was not present at the address to which*
24 *notice was mailed even though the manner of service was*
25 *permissible under statute).*

26 *Ryniker II* at *6 (emphasis added).

27 The district court also stated that "[t]he factors for setting aside a default

1 judgment"--whether the default was willful, whether setting it aside would prejudice
2 the plaintiff, and whether the defendant has proffered a meritorious defense--"weigh
3 in Sumec's favor." *Id.* It stated, *inter alia*, that, "Sumec's default was not willful
4 because they had no notice of the Adversary Proceeding," and that "a showing that
5 a default was inadvertent is sufficient." *Id.* (internal quotation marks omitted).

6 The district court vacated the default judgment and remanded to the
7 bankruptcy court "for further proceedings consistent with" the *Ryniker II* opinion. *See*
8 *id.* at *7.

9 Ryniker sought to appeal *Ryniker II* to this Court; but in *Ryniker III*, we
10 dismissed the appeal for lack of appellate jurisdiction because the district court's
11 remand order was not a final judgment.

12 E. *The Bankruptcy Court's Decision in Ryniker IV*

13 On the remand from the district court, Sumec moved to dismiss the
14 Adversary Complaint. Following a hearing on the motion, the court entered the
15 following order dismissing the action "with prejudice":

16 Upon consideration of the motion (the "Motion") pursuant
17 to Fed. R. Civ. P. 12(b)(5), made applicable herein by Fed. R.
18 Bankr. P. 7012(b)(5), of Defendant SUMEC Textile Company

1 Limited ("Defendant") to dismiss the above-captioned adversary
2 proceeding (the "Adversary Proceeding") brought by Plaintiff
3 Brian [sic] Ryniker, in his capacity as the Litigation Administrator
4 ("Plaintiff") against Defendant, and good cause appearing
5 therefore, it is hereby

6 ORDERED, that the Motion is GRANTED, and it is
7 further,

8 ORDERED, that the Adversary Proceeding and
9 Complaint against Defendant is [sic] hereby DISMISSED
10 WITH PREJUDICE.

11 *Ryniker IV* at 1-2.

12 The bankruptcy court, at Ryniker's request, certified its *Ryniker IV* order
13 for direct appeal to this Court, which we accepted. *See* 28 U.S.C. § 158(d)(2)(A).

14
15 II. DISCUSSION

16 On appeal from the bankruptcy court's dismissal of the adversary
17 proceeding, Ryniker argues that, whether or not Sumec and B&J were in direct
18 contact, the district court erred in vacating the default judgment entered against
19 Sumec based principally on its ruling that B&J lacked actual or apparent authority to
20 receive service of process on Sumec's behalf in connection with the Décor bankruptcy

1 proceeding. "[A]n order of the district court functioning in its capacity as an appellate
2 court in a bankruptcy case is subject to plenary review" *In re Jackson*, 593 F.3d
3 171, 176 (2d Cir. 2010). "[W]e independently review the factual determinations and
4 legal conclusions of the bankruptcy court," *id.* (internal quotation marks omitted),
5 "accepting the bankruptcy court's factual findings unless they are clearly erroneous[]"
6 and reviewing its conclusions of law *de novo*," *In re DiBattista*, 33 F.4th 698, 702 (2d Cir.
7 2022) (internal quotation marks omitted); *see also Burda Media, Inc. v. Viertel*, 417 F.3d
8 292, 298 (2d Cir. 2005) ("the *de novo* standard of review is . . . used for review of the
9 denial of a motion to vacate a default judgment challenged, under [Rule 60]
10 subsection (b)(4), for lack of [personal] jurisdiction").

11 For the reasons that follow, we find merit in the Administrator's
12 challenges to the district court's ruling in *Ryniker II*, given our conclusion, under well
13 established legal principles, that Sumec conferred on B&J actual authority to accept
14 service of the Adversary Complaint in that bankruptcy proceeding.

15 A. *Principles as to Agency*

16 Agency is the fiduciary relationship that arises when one
17 person (a "principal") manifests assent to another person (an
18 "agent") that the agent shall act on the principal's behalf and

1 subject to the principal's control, and the agent manifests assent *or*
2 *otherwise consents so to act.*

3 *Restatement (Third) of Agency* § 1.01 (2006) ("*Restatement Third*") (emphasis added).

4 An agent acts with actual authority when, at the time of taking
5 action that has legal consequences for the principal, the agent
6 reasonably believes, in accordance with the principal's
7 manifestations to the agent, that the principal wishes the agent so
8 to act.

9 *Id.* § 2.01. Further, "[a]n agent has actual authority" not only "to take action
10 designated *or implied* in the principal's manifestations to the agent," but also to
11 perform "*acts necessary or incidental to achieving the principal's objectives*, as the agent
12 reasonably understands the principal's manifestations and objectives when the agent
13 determines how to act." *Id.* § 2.02(1) (emphases added).

14 "[I]mplied authority' . . . is a form of actual authority" and "encompasses
15 situations in which the agent reasonably believes the principal wishes action to be
16 taken due to necessity." *Id.* § 2.02 comment *b.* "The agent's belief must be grounded
17 in a manifestation of the principal," but manifestations of intent are "not limited to the
18 principal's written or spoken words"; they also include relevant "circumstan[ces]."
19 *Id.* § 2.02 comment *c.* "An agent's understanding of the principal's objectives is
20 reasonable if it accords with the principal's manifestations and the inferences that a

1 reasonable person in the agent's position would draw from the circumstances creating
2 the agency." *Id.* § 2.02(3); *see, e.g., id.* § 2.02 comment *e* ("The context in which
3 principal and agent interact, including the nature of the principal's business . . . ,
4 frames the reasonableness of an agent's understanding of the principal's objectives.
5 . . . The context in which principal and agent interact will often include customs and
6 usages that are particular to a type of business A person carrying on business has
7 reason to know of such customs and usages and thus has notice of them as defined
8 in § 1.04(4).").

9 The law of agency also recognizes the existence, authority, and functions
10 of subagents.

11 A subagent is a person *appointed by an agent to perform functions*
12 *that the agent has consented to perform on behalf of the agent's principal*
13 *and for whose conduct the appointing agent is responsible to the*
14 *principal. The relationships between a subagent and the*
15 *appointing agent and between the subagent and the appointing agent's*
16 *principal are relationships of agency as stated in § 1.01.*

17 *Restatement Third § 3.15(1) (emphases added).*

18 *An agent who appoints a subagent delegates to the subagent power to act*
19 *on behalf of the principal that the principal has conferred on the agent.*
20 *A subagent acts subject to the control of the appointing agent, and*
21 *the principal's legal position is affected by action taken by the*
22 *subagent as if the action had been taken by the appointing agent.*
23 *Thus, a subagent has two principals, the appointing agent and that*

1 *agent's principal.* Although an appointing agent has the right and
2 duty to control a subagent, *the interests and instructions of the*
3 *appointing agent's principal are paramount.*

4 *Id.* § 3.15 comment *b* (emphases added).

5 "An agent may appoint a subagent only if the agent has actual or
6 apparent authority to do so." *Id.* § 3.15(2).

7 An agent has actual authority to create a relationship of
8 subagency when the agent reasonably believes, based on a
9 manifestation from the principal, that the principal consents to the
10 appointment of a subagent. . . .

11 A principal's consent to the appointment of a subagent may
12 be express or implied. . . . *Implied consent to appoint subagents is . . .*
13 *present when an agent is itself a person that is not an individual, such*
14 *as a corporation.*

15 *Id.* § 3.15 comment *c* (emphasis added).

16 *As between a principal and third parties, it is immaterial that an action*
17 *was taken by a subagent as opposed to an agent directly appointed by the*
18 *principal.* In this respect, subagency is governed by a principle of
19 *transparency* that looks from the subagent to the principal and
20 through the appointing agent. . . .

21 *When a subagent works on a principal's account, notifications*
22 *received by the subagent are effective as notifications to the principal to*
23 *the same extent as if the principal had appointed the subagent directly.*
24 Likewise, *notice of facts the subagent knows or has reason to know is*
25 *imputed to the principal to the same extent as if the principal had*
26 *appointed the subagent directly.*

1 *Id.* § 3.15 comment *d.* (emphases added); *see id.* § 5.02(1) ("A notification given to an
2 agent is effective as notice to the principal if the agent has actual or apparent authority to
3 receive the notification, unless the person who gives the notification knows or has
4 reason to know that the agent is acting adversely to the principal" (emphasis
5 added)).

6 B. *Sumec's Faulty Timeline*

7 The district court gave scant recognition to these established principles
8 set out in the *Restatement*. It referred to B&J as a "purported" subagent, *Ryniker II*
9 at *5, despite the documents in the record that plainly show:

10 (a) that "SUMEC . . . executed [the] Collection Trust Deed for the
11 purpose of authorizing SINOSURE to collect the Debt" (Sumec's Gu
12 Decl. ¶ 12);

13 (b) that Sinosure was a corporation (*see id.* ¶ 7), which Sumec thus
14 impliedly authorized to act through subagents, *see Restatement Third*
15 § 3.15 comment *c*;

16 (c) that "B&J was hired by SINOSURE to collect the Debt. Toward
17 that end, B&J prepared and filed a proof of claim on account of the Debt
18 . . . in SUMEC's name. It did so because it was acting at the bequest of
19 SINOSURE and SINOSURE was authorized to use SUMEC's name to
20 collect the Debt" (Sumec's Gu Decl. ¶ 16); and

21 (d) that the "Debt" was "the unpaid balance owed to [Sumec] by

1 the Debtors" (*id.* ¶ 9).

2 Even if, as Gu asserts, Sumec had no direct "contact with B&J" between
3 the filing of the Adversary Complaint and the entry of the default judgment (*id.* ¶ 15;
4 *see also id.* ¶ 19 (prior to the entry of the default judgment, "B&J did not report to or
5 *directly* communicate with SUMEC" (emphasis added))), that would be irrelevant to
6 B&J's status as a subagent. "A principal may choose how best to communicate with
7 a subagent," including "choos[ing] to rely exclusively on the appointing agent as the
8 channel of communication with the subagent." *Restatement Third* § 3.15 comment *e.*
9 B&J was clearly an agent of Sinasure for purposes of collecting Décor's debt to Sumec.
10 The Collection Trust, the Sinasure Instructions to B&J, and the Gu Declaration show--
11 in accordance with established principles of agency--that B&J was Sumec's subagent
12 with respect to Sumec's attempt to collect what it was owed by Décor.

13 In attempting to distance itself from its subagency relationship with B&J,
14 and deny authorizations that were implicit in the subagency, Sumec submitted the
15 Gu Declaration, which proffers a sequence of events that is misleading and is squarely
16 refuted by the record. After noting and quoting the Subrogation Agreement that was
17 signed "on October 18, 2019" (Sumec's Gu Decl. ¶ 11), Sumec's Gu Declaration says:

18 *Significantly*, the Subrogation Agreement authorizes SINASURE

1 to collect in SUMEC's name.

2 12. SUMEC *also* executed a certain Collection Trust Deed
3 for the purpose of authorizing SINOSURE to collect the Debt.
4 *Significantly*, the scope of the Collection Trust Deed is *limited*.

5 (*Id.* ¶¶ 11-12 ("limited" emphasized in original; other emphases added).) While
6 Sumec's Gu Declaration, by this sequencing of assertions, appears to imply that the
7 Collection Trust agreement (a) was entered into only after the October 18, 2019
8 Subrogation Agreement, and (b) gave Sinosure only authority that was "limited,"
9 neither implication is true.

10 First, while the Collection Trust itself, as it appears in the record, does
11 not bear a date, the record reveals indisputably that it was entered into in early 2019.
12 It was submitted to the bankruptcy court as part of Sumec's Proof of Claim on April
13 16, 2019. (*See, e.g.*, Sumec's Gu Decl. Ex. E (Sumec's Proof of Claim).)

14 Second, Sumec's assertion that the authority given by Sumec to Sinosure
15 in the Collection Trust was "limited" is contradicted by the language of the Collection
16 Trust itself--which Sumec's Gu Declaration quotes. Sumec there expressly
17 "confirm[ed its] agreement and authorization to [Sinasure], *of the full rights for*
18 *collection, on our behalf, against* Décor, "*for the full amount of*" \$3,029,719.52 plus
19 accrued interest; and it "further confirm[ed its] *grant to [Sinasure] the full power in*

1 *exercising such rights and remedies in our or its own name*" (Collection Trust (A.149)
2 (emphases added)).

3 It was indeed "[s]ignificant[]" that Sumec gave Sinosure authorization to
4 collect the Décor debt in Sumec's name; but that authorization had been given not
5 later than April 16 (*see* Gu Decl. ¶ 12 (quoting Collection Trust)), rather than--as
6 suggested in Sumec's Gu Declaration ¶¶ 11 and 12--after October 18.

7 Further, authority conferred on Sinosure in the Collection Trust was in
8 fact exercised by Sinosure on "*March 4, 2019,*" when it "hired" B&J "*[t]o assist in debt*
9 *collection, i.e., "debt collection against [Décor] who has defaulted in payment to our*
10 *client [SUMEC]."* (Sumec's Gu Decl. ¶ 14 (quoting Sinosure Instructions to B&J
11 (all emphases ours)).)

12 Sumec's Gu Declaration moved from noting Sumec's filing an insurance
13 claim with Sinosure in February 2019 (Sumec's Gu Decl. ¶ 9), directly to recounting
14 Sinore's payment to Sumec in settlement of that claim in October 2019 (*id.* ¶ 10), as
15 if nothing of significance had occurred in the interim--stating that Sumec did not
16 pursue collection of the Décor debt and "did not file a proof of claim in these cases"
17 "*[f]ollowing payment of its Insurance Claim*" (*id.* (emphasis added)), and asserting that
18 thus

1 *SINOSURE . . . sought to collect the debt it **now** was owed having*
2 *paid SUMEC on its Insurance Claim. **At all relevant times,***
3 ***SINOSURE**, acting independently of SUMEC, and without notice*
4 *or reporting to, or consulting with, SUMEC, *sought to collect the**
5 *Debt it **now** was owed as subrogee (id. ¶ 13 (all emphases added)).*

6 But this Sumec-Gu description alleges only actions--or inactions--after mid-October
7 2019.

8 The relevant times for determining what agency relationships existed
9 were early 2019, when Sinasure was authorized by Sumec in the Collection Trust to
10 collect the full amount owed to Sumec, then when B&J was authorized in Sinasure's
11 Instructions to collect for Sumec, and finally when--on April 16, 2019--B&J filed the
12 Proof of Claim on behalf of Sumec and provided B&J's name and the address to
13 which notices to Sumec should be sent. When Sinasure had B&J file Sumec's Proof
14 of Claim in April 2019, the only debt that was the subject of that claim was Décor's
15 debt to Sumec. When Sumec's Proof of Claim was filed, Sinasure had not made an
16 insurance payment to Sumec; Sinasure was not then itself owed a debt; and it was not
17 then a Sumec subrogee. In Sumec's assertion that Sinasure sought only to collect a
18 debt that Sinasure "*now was owed as subrogee*," the "*now . . . owed*" did not occur until
19 six months after Sinasure had B&J file a Proof of Claim to collect the debt owed
20 Sumec.

1 We accordingly express no view as to the analysis we would employ, or
2 the result we would reach, if Sinasure had been Sumec's subrogee rather than its
3 agent when Sumec's Proof of Claim was filed.

4 Finally, while Gu repeatedly asserts that the documents themselves did
5 not authorize Sinasure or B&J to accept service of an adversary proceeding summons
6 for Sumec, those assertions disregard the bankruptcy context and Sumec's
7 manifestations as to its desire to receive "the full amount" that Décor owed. Here,
8 where:

9 ■ Sumec, in the Collection Trust created prior to the filing of its Proof
10 of Claim, had confirmed to its agent Sinasure "our . . . authorization . . .
11 for collection, on our behalf," of "U.S. DOLLARS THREE MILLION AND
12 TWENTY-NINE THOUSAND SEVEN HUNDRED AND NINETEEN
13 CENTS FIFTY-TWO" (A.149);

14 ■ the subagent had received Instructions from Sinasure, Sumec's agent,
15 "for debt collection against [Décor] who has defaulted in payment to . . .
16 SUMEC" (A.151);

17 ■ the subagent had been authorized by Sumec's agent to use either the
18 agent's name "or its own name" for the "debt collection" (A.152);

19 ■ the subagent had filed a Proof of Claim in Décor's bankruptcy
20 proceeding in the name of Sumec as creditor;

21 ■ the subagent had listed its own name and address in response to the
22 question "[w]here should notices to the creditor be sent" (A.144); and

1 ■ Sumec, "on [its own] behalf," had conferred "full rights" and "full
2 power in exercising such rights" for the express purpose of receiving "the
3 full amount of USD 3029719.52" (A.149),

4 the subagent had implicit authority to accept for the principal--and the duty to inform
5 the principal of--notice of the Adversary Complaint in which the Administrator
6 expressly sought "TO AVOID AND RECOVER TRANSFERS... AND TO DISALLOW
7 CLAIMS" (A.341 (emphasis added)).

8 Under the applicable agency principles--in the bankruptcy proceeding
9 of Décor of which Sumec was a creditor--B&J "ha[d] two principals, the appointing
10 agent," Sinasure, "and that agent's principal," Sumec; and "the interests and
11 instructions of" Sumec "[we]re paramount," *Restatement Third* § 3.15 comment *b*.
12 Given that B&J, the subagent, had--as authorized--filed Sumec's Proof of Claim in the
13 bankruptcy and provided B&J's name and address for where "notices to the creditor"
14 "should . . . be sent," and given that Sumec had authorized its agent Sinasure to seek
15 collection--for Sumec--of "the full amount" of the specified debt, which Sinasure
16 engaged B&J to accomplish, B&J possessed authority to accept on behalf of Sumec in
17 the bankruptcy proceeding any notice of a claim by the Litigation Administrator that
18 would reduce Sumec's recovery below "the full amount" that Sumec had specified it
19 desired. Thus, we conclude that the district court erred in ruling that B&J lacked

1 actual authority to accept service of the Adversary Complaint in this case on Sumec.

2 We note that the district court, in finding it unreasonable for Ryniker to
3 believe that B&J was authorized to accept service of the Adversary Complaint on
4 behalf of Sumec, focused solely on the communications between Ryniker and Geldes
5 after that pleading had been sent to B&J, *see, e.g., Ryniker II* at *5 ("here there was no
6 direct communication between Sumec and the litigation administrator for over two
7 years"), and concluded that there was no specific manifestation from Sumec, the
8 principal. We disagree with the conclusion that there was no authorization, first
9 because the district court's focus on conversations after the Adversary Complaint was
10 served ignored Sumec's statements at the initiation of the Sinasure agency (perhaps
11 as a result of Gu's non-chronological presentation suggesting that the Collection Trust
12 was created only after Sinasure had made a payment to Sumec in October 2019,
13 rather than preexisting and being a part of Sumec's Proof of Claim as filed in April
14 2019). Second, we disagree with the district court's view that B&J lacked authority to
15 accept service of process for Sumec because Sumec had not given B&J that "specific"
16 authorization. As discussed in Part II.A. above, a principal's grant of authority to an
17 agent need not be explicit, but may be implied by the principal's manifestations of its
18 goals. And, as the *Restatement* notes, implied authority is actual authority.

1 Finally, to the extent that the district court ruled that Ryniker's service
2 of process on B&J was insufficient under the Federal Rules of Bankruptcy Procedure,
3 we disagree based on the language of Bankruptcy Rule 7004 and the principles of
4 agency discussed above. Rule 7004 allows service on a "foreign corporation" "by
5 mailing the copy" of a summons and complaint "to an officer, a managing or general
6 agent, or *an agent authorized by appointment* or by law to receive service." Fed. R.
7 Bankr. P. 7004(b)(3)(A) (emphasis added). Therefore, the dispositive questions as to
8 the validity of service in this case were (1) whether B&J was Sumec's subagent, and
9 (2) whether B&J was authorized by its appointment to receive service for Sumec. For
10 the reasons set forth above, we answer both questions in the affirmative.

11 In sum, we conclude that the record in this case revealed that B&J, which
12 was authorized to file the Proof of Claim in Sumec's name and to list itself as the
13 entity to receive any notices to Sumec, and which was expressly, through Sinasure,
14 authorized by Sumec to seek Sumec's full recovery from Décor, had implicit authority
15 to accept for Sumec the Adversary Complaint and summons in order to defend
16 against the Litigation Administrator's attempt to reduce the net payments to Sumec
17 by means of recovering preferential pre-bankruptcy-petition payments by Décor to
18 Sumec.

1 CONCLUSION

2 We have considered all of Sumec's arguments on this appeal and have
3 found them to be without merit. The judgment of the bankruptcy court in *Ryniker IV*,
4 dismissing the adversary proceeding with prejudice, is vacated. We also vacate the
5 order of the district court in *Ryniker II* that vacated the bankruptcy court's entry in
6 *Ryniker I* of a default judgment against Sumec." The default judgment is thus
7 reinstated, and we remand to the bankruptcy court for consideration of whether
8 Sumec should be granted relief from that judgment under Fed. R. Civ. P. 60(b).

9 Costs to plaintiff.