

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
LISA NOVELLA LEDGER,) CASE NO. 04-61481 JPK
) Chapter 13
Debtor.)

ORDER REGARDING FURTHER PROCEEDINGS ON MOTION

On July 12, 2006, the Court entered an order regarding the form of notice utilized by debtor's counsel with respect to a motion filed on July 7, 2006. This order included comments concerning the relief requested by the motion, and concerning deficiencies in the form of order submitted to the Court with respect to the motion. On July 25, 2006, the debtor's counsel filed a document designated as "Motion to Sell/Abandon Real Estate With Notice of Motion", a certificate of service concerning the form of "Notice of Motion to Sell" provided to creditors and parties-in-interest, and a proposed form of order with respect to the motion.

The form of Notice significantly departs from the requirements of N.D.Ind.L.B.R. B-2002-2(c); however, the Court will give the debtor's counsel a pass on re-doing the notice, in that the notice obviously attempts to comply with the Court's July 12, 2006 order regarding deficiencies in it.

Next, reviewing the motion itself, instead of taking to heart footnote 1 in the July 12, 2006 order, a document which again requests two diametrically opposed forms of relief was filed. A motion for abandonment under 11 U.S.C. § 554 asserts primarily that property is unduly burdensome to the estate and of no benefit to creditors; a motion which seeks authority to sell property under 11 U.S.C. § 363 includes the implicit concept that the property is valuable to the estate and should be sold under the auspices of administration of the estate. The Court will give the debtor's counsel a pass on the form of motion, as well, and will merely deny the request for abandonment stated in the motion.

Now we come to the proposed form of order. The infirmities noted in footnote 1 of the July 12, 2006 order have not been corrected by the proposed form of order tendered on July 25, 2006. Perhaps the most critical shortcoming is the fact that the order does not provide for sale of the subject property "free and clear" of liens. As noted previously, the form of order does not authorize payment of ordinary and necessary expenses of sale at the closing, as well. The order should designate the identity of entities to be directly paid from the closing, including the identity of mortgagees. The order should specifically authorize the payment of ordinary and necessary expenses of closing to be incurred by the seller. It might be appropriate for the order to use a correct linkage between a noun and a pronoun, as in paragraph 1 of the presently tendered form of order a singular "Debtor" is used in conjunction with the plural "their".

IT IS ORDERED that the portion of the motion which seeks abandonment is denied.

IT IS FURTHER ORDERED that the Court will approve the portion of the motion seeking authority to sell property upon submission by debtor's counsel of an appropriate form of order.

Dated at Hammond, Indiana on September 7, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee