

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
)  
HARRY F. MESSENGER ) CASE NO. 06-12284  
TANYA UILANI MESSENGER )  
)  
Debtors )

**DECISION**

At Fort Wayne, Indiana, on April 20, 2007.

This matter is before the court on debtors' motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid judicial liens which allegedly impair their exemption in residential real estate. The liens in question are held by Citifinancial, Heights Finance, Fort Wayne Community Schools, and The Mount Morris Savings and Loan. Notice of the motion has been given to the lienholders and there have been no objections thereto. Despite the fact that there have been no objections, the court concludes that the debtors' motion may only be granted in part.

To the extent the motion seeks to avoid the liens of Citifinancial, Heights Finance, and Fort Wayne Community Schools, the motion may be granted and those liens avoided. As to The Mount Morris Savings and Loan, however, it should be denied, because it has not been properly served.

Motions to avoid judicial liens initiate contested matters governed by Bankruptcy Rule 9014, Fed. R. Bankr. P. Rule 4003(d), and should "be served in the manner provided for service of a summons and complaint by Rule 7004." Fed. R. Bankr. P. Rule 9014. When the entity affected is an "insured depository institution" (as defined by section 3 of the Federal Depository Insurance Act), as is The Mount Morris Savings and Loan, Rule 7004(h) requires that service "shall be made by certified mail addressed to an officer of the institution unless" the Bank has authorized service by

first-class mail or an attorney has filed an appearance on behalf of the bank. See, Fed. R. Bankr. P. Rule 7004(h)(1)-(3). Neither of those exceptions appear to apply here. Instead of serving the Bank by certified mail addressed appropriately, the debtors simply served the bank by regular mail. This is not appropriate. Absent proper service, the motion cannot be granted.

An appropriate order will be entered.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court