

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JAMES A. SIMON) CASE NO. 06-10150
) CHAPTER 7 INVOLUNTARY
)
Debtor)

DECISION AND ORDER ON MOTION TO EXTEND TIME

At Fort Wayne, Indiana, on May 24, 2007

In this involuntary case, the debtor filed a motion for summary judgment, together with materials in support thereof, on April 30, 2007. Rather than directly objecting or responding to the motion, as contemplated by the court's local rules, see, N.D. Ind. L.B.R. B-7056-1, the petitioners filed a motion to strike debtor's motion for summary judgment. Doing so is not unknown, but it is also not particularly advisable and it is not a preferred procedure because of the confusion it creates. Should the motion to strike be characterized as that parties' response to the motion for summary judgment, with the result that original movant's time to reply (fifteen (15) days) begins to run on the date the motion to strike is filed, or should it be characterized as an independent motion, beginning a new round of briefing and briefing schedules, which may not be ripe for consideration until approximately forty-five (45) days until after it was filed? See, N.D. Ind. L.B.R. B-7056-1; 7007-1(a). The court cannot think of any reason justifying an independent motion to strike in this type of situation. If a particular motion is so lacking in merit that it should be stricken, it would seem that the argument could be advanced directly through an objection to the motion rather than by challenging it with an independent proceeding.

The need to properly characterize a motion to strike – and to resolve the confusion it creates – is of some importance in this particular case. The debtor’s motion for summary judgment was filed on April 30, 2007, and the motion to strike was filed on May 7. If that motion is characterized as the response to the motion for summary judgment, the time for the debtor to reply expired on May 22, and the court should be taking the motion for summary judgment under advisement. If, on the other hand, the court is confronted with two separate motions, the petitioners have until May 30 within which to respond to the debtor’s motion to summary judgment and the debtor’s response to the petitioners’ motion to strike would not be due until approximately a week later; both sides would also have an opportunity to reply to their opponent’s arguments. This confusion has not been lost upon the petitioners. They have recently filed a motion to extend the time to respond to the debtor’s motion for summary judgment. This most recent motion is based upon their motion to strike and asks that the petitioners be given thirty days following the ruling on that motion within which to respond to the debtor’s motion for summary judgment.

The court is not inclined towards the petitioners’ request. To some extent it seems a little odd to create the very confusion that necessitates the present motion and then use the situation as a basis for seeking additional time to respond to the debtor’s motion for summary judgment. More importantly, the court disapproves of motions to strike which are filed in response to someone else’s motion; they should be discouraged. As indicated above, the court cannot think of any reason why whatever arguments someone wants to advance in a motion to strike a particular request cannot be advanced in a straight-forward objection to that request. See, Knudsen v. Liberty Mutual Ins. Co., 411 F.3d 805 (7th Cir.2005) (“we hope that in the future [parties] will address issues directly rather than move to strike the [opponent’s] papers.”). Doing so avoids the confusion that has been created

in this case and will allow the court to confront all of the issues associated with the request at one time, rather than in a piecemeal fashion.

In light of the foregoing, the petitioners' motion for an extension of time is DENIED, except to the extent that they shall have to and including June 7, 2007, to respond to debtor's renewed motion for summary judgment. This is the same date the debtor's response to the petitioners' motion to strike is due and, given the opportunity both sides will have to reply, should allow the court to take both motions under advisement at the same time.

SO ORDERED.

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