

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
C. GREGORY SPEICHERT and) CASE NO. 07-21172
SUSAN E. SPEICHERT,) Chapter 7
)
Debtors.)

ORDER REGARDING DEFECTIVE SERVICE OF PROCESS

On July 19, 2007, the debtors, by counsel Larry D. Stassin, filed a motion pursuant to 11 U.S.C. § 522(f) to avoid a judicial lien. This motion was met with an order entered by the Court on July 20, 2007, which directed debtors' counsel's attention to the requirements of N.D.Ind.L.B.R. B-2002-2 with respect to the motion.

N.D.Ind.L.B.R. B-2002-2 is thus the first rule of which debtors' counsel was apparently not aware, and with which he failed to comply in this attempted contested matter.

The debtors' motion was also the subject to two other orders, both of which were entered on July 30, 2007, the first of which directed the debtors' counsel to file signature pages regarding the motion, and the second of which directed the debtors' counsel to file a certificate of service regarding the motion. Fed.R.Bankr.P. 9011(a) requires that motions of the nature of that before the Court "shall be signed by at least one attorney of record in the attorney's individual name". Fed.R.Bankr.P. 7004(a)(1) incorporates Fed.R.Civ.P. 4(l) into this contested matter, and requires that proof of service be filed, a requirement echoed by the requirements of N.D.Ind.L.B.R. B-9013-4, which specifies the form in which the certificate of service is to be filed.

The foregoing paragraph adds three additional rules to the list of rules which debtors' counsel either failed to read, or failed to comprehend, or failed to apply. The count is now up to four rules to which debtors' counsel failed to adhere in this extremely simple contested matter.

On August 7, 2007, the debtors' counsel tried again by filing a document entitled

"Amended Motion to Avoid Judicial Lien on Real Estate". Despite having been advised of the existence of N.D.Ind.L.B.R. B-2002-2(a)(5) by Court's July 20, 2007 order, this motion was not accompanied by evidence of compliance with that rule, which caused the Court to issue an administrative order on August 9, 2007 which again pointed out this deficiency to the debtors' counsel. Thus, we now have a fifth instance of the debtors' counsel's failure to abide by an applicable rule, and the first instance of the debtors' counsel's failure to take cognizance of an order previously entered which advised him of this failure with respect to a prior filing.

On August 23, 2007, the Court issued an order with respect to the form of notice filed of record on August 14, 2007, which pointed out a deficiency with respect to the length of the notice period provided for by that document. This is thus the sixth instance in this extremely simple contested matter in which debtors' counsel failed to comply with a clearly written rule.

In apparent response to the August 23, 2007 order, debtors' counsel filed an "Amended Notice of Motion and Opportunity to Object". The Court faults itself for not previously specifying every possible rule which could be applicable to a simple matter regarding service of a motion in this contested matter and in excruciating detail explaining the manner of compliance with those rules. Clearly, it is the Court – and not debtors' counsel – which is at fault for not providing a seminar for debtors' counsel on how to locate applicable rules, read them, and then apply them.

We now come to the next deviation from a readily ascertainable rule. The documents filed by debtors' counsel indicate that the creditor whose judicial lien is sought to be avoided is a domestic corporation, and thus is subject to the service rules of Fed.R.Bankr.P. 7004(b)(3). In order for the Court to obtain valid *in personam* jurisdiction over the creditor, compliance with that rule is absolutely necessary, and service of process must be made by means of service which states explicitly the following: "Mary Boyd and Associates, Inc.; ATTENTION: Highest Ranking Officer, or Managing or General Agent; 6330 East 75th Street, Suite 212, Indianapolis,

IN 46250".

IT IS ORDERED that the Court will take no action on the amended motion filed on August 7, 2007 until a certificate of service in proper form is filed which evidences service of the amended motion in accordance with applicable rules, together with the form of notice required by N.D.Ind.L.B.R. B-2002-2(a)(5) in proper form upon the targeted creditor.

Dated at Hammond, Indiana on October 3, 2007.

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

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee