

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
CHRISTIE L. HANSEN) CASE NO. 08-10974
)
)
Debtor)

DECISION AND ORDER DENYING MOTION FOR RELIEF FROM STAY

At Fort Wayne, Indiana, on June 10, 2008.

The matter is before the court on a motion for relief from stay filed by Kathleen Gillespie on May 1, 2008. Both the motion and the notice of the motion and opportunity to object to it are deficient. As a result, the motion is being denied, without prejudice.

The notice of the motion and opportunity to object which was served on creditors and parties in interest does not comply with the local rules of this court. To begin with, the notice does not adequately “state the relief sought” by the motion. N.D. Ind. L.B.R. B-2002-2(c)(3). It states only that a motion for relief from stay and abandonment has been filed and that is not enough. See, N.D. Ind L.B.R. B-2002-2, commentary (“The requested relief should be stated with sufficient particularity in the notice [so] that the reader can determine, from this statement alone, what it is that the movant is asking the court to do.”). Additionally, while the notice references a motion for relief from stay, the final paragraph tells the reader that, absent objection, the court might confirm a plan as modified. This makes the notice unnecessarily confusing.

The motion also suffers from deficiencies. Although its title purports to seek abandonment as well as relief from stay, abandonment is never mentioned again, whether in the body of the motion or the prayer. More importantly, however, the allegations contained in the motion fail to state an

effective claim for relief from the automatic stay or abandonment. See, 11 U.S.C. §§ 362(d), 554(b). See also, Fed. R. Bankr. P. Rule 9013 (motion initiating a contested matter shall state the grounds for the relief sought with particularity). The motion alleges only that the creditor wants the stay terminated so that she can proceed against her collateral. While that may explain why the creditor is filing the motion it does not explain why she is entitled to the relief sought or why the court should terminate the stay. A proper motion to terminate the stay must allege particular facts that are sufficient to bring the movant within one or both of the statutory grounds warranting that relief. See, 11 U.S.C. § 362(d)(1), (2). Just because a secured creditor wants the stay terminated is not a sufficient basis for doing so. In re Szymanski, 344 B.R. 891, 896-97 (Bankr. N.D. Ind. 2006).

There is a document titled “Memorandum In Support of Motion . . .” that accompanies the notice to creditors but has not otherwise been filed with the court. If the court could characterize that memorandum as the motion, or consider it in addition to the allegations made in the motion, the statements it contains are sufficient to satisfy the pleading requirements for a motion for relief from stay. Unfortunately, the court cannot consider this memorandum in connection with its ruling.

In the first instance, the memorandum has not been filed with the court; it is simply an attachment to the movant’s notice to creditors. A proper memorandum of law should be filed separately from the motion to which it relates. See, N.D. L.B.R. B-7007-1(a) (requiring certain motions to be “be accompanied by a separate supporting brief.”). Secondly, neither the court nor its local rules required a brief in this situation and briefs which are not contemplated by the local rules or requested by the court should be disregarded. In re GT Automation, Inc., 320 B.R. 671 (Bankr. N.D. Ind. 2005). While the court’s local rules do require some motions to be accompanied by a separate supporting brief, it is only “motion[s] filed within a contested matter or an adversary

proceeding” that are subject to that requirement. N.D. L.B.R. B-7007-1(a)(emphasis added). A motion for relief from stay is not filed within a contested matter. To the contrary, such a motion initiates a contested matter. See, Fed. R. Bankr P. Rule 9014(a). See also, N.D. Ind. L.B.R. B-9013-1. As such it is not subject to the briefing requirements of local rule B-7007-1. Finally, the purpose of a brief to advance an argument applying the applicable law to the facts of a given matter. In re King, 2006 WL 1994679 (Bankr. N.D. Ind. 2006). It cannot enlarge upon those facts. The facts themselves must come from someplace else, whether as proved at trial, allegations in a complaint or motion initiating a contested matter that are deemed admitted by the lack of a response, or, as in the case of a motion for summary judgement, an affidavit accompanying the motion. A brief may not supply missing facts in order to justify the relief sought and that, essentially, is what the “memorandum” seems to do.

For all of these reasons, the motion for relief from stay filed by Kathleen Gillespie is DENIED, without prejudice to resubmission.

SO ORDERED.

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