

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
) CASE NO. 08-11322
) CHAPTER 7
KRISTIN ELAINE CANADY)
)
)
)
Debtor)

DECISION AND ORDER
ON MOTION TO AVOID A JUDICIAL LIEN

At Fort Wayne, Indiana, on August 5, 2008.

The debtor filed a motion to avoid a judicial lien, pursuant to 11 U.S.C. § 522(f). The lien in question is held by First Farmers Bank & Trust Company (hereinafter “the Bank”). The certificate of service filed with regard to the motion shows that it was served by first-class mail on June 19, 2008.¹ There have been no objections to the motion within the time required, see, N.D. Ind. L.B.R. B-2002-2(b)(2), and the matter is, therefore, before the court.

A motion to avoid a judicial lien initiates a contested matter governed by Bankruptcy Rule 9014. Fed. R. Bankr. P. Rule 4003(d). The motion should “be served in the manner provided for service of a summons and complaint by Rule 7004.” Fed. R. Bankr. P. Rule 9014. In most instances, Rule 7004 authorizes service by first-class mail. See, Fed. R. Bankr. P. Rule 7004(b). But where the entity affected is an “insured depository institution” (as defined by section 3 of the Federal Depository Insurance Act), service by first-class mail under Rule 7004(b) is not an option.

¹If the motion had been objected to, it is quite likely that the court would not have received a copy of any objection, because the address on the notice of the motion to which objections should be sent provides a post office box which the court ceased using some time ago. Thus, it is questionable whether the sufficient notice of the motion has been given. N.D. Ind. L.B.R. B-2002-2(c)(5).

Instead, Rule 7004(h) requires that service “shall be made by certified mail addressed to an officer of the institution unless” one of three specific exceptions applies. See, Fed. R. Bankr. P. Rule 7004(h)(1)-(3). Nothing in the court’s file indicates that it has authorized service by first-class mail, the Bank has not filed a written waiver of the right to service by certified mail, and no attorney has filed an appearance on its behalf. Id. Therefore, service is defective because the debtor failed to serve the Bank by “certified mail addressed to an office of the institution”

Even if the Bank received actual notice of the debtor’s motion to avoid a judicial lien, this would not remedy the lack of valid service of process. Mid-Continent Wood Products, Inc. v. Harris, 936 F.2d 297, 300 (7th Cir. 1991).

The debtor has failed to serve the motion to avoid a judicial lien as required by the Bankruptcy Rules. Consequently, the motion is DENIED without prejudice to resubmission.

SO ORDERED.

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