

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
REBECCA ANN OVERTON-GRIMM) CASE NO. 08-10530
)
)
Debtor)

DECISION AND ORDER DENYING MOTION TO AVOID LIENS

At Fort Wayne, Indiana, on August 15, 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 T II, LLC successor in interest to Gordon Food Service, Inc. 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 this instance, neither the motion nor the notice of the opportunity to object to it were served upon the lienholder, but apparently upon an attorney who has not filed an appearance in the bankruptcy. That is not appropriate. In re Rae, 286 B.R. 675 (Bankr. N.D. Ind. 2002). See also, Matter of Teknek, LLC, 512 F.3d 342, 346 (7th Cir. 2007). Without proper service of both the motion and notice of opportunity to object upon the lienholder, the motion to avoid liens cannot be granted. See, Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350, 119 S.Ct. 1322, 1326-27 (1999). It is therefore DENIED without prejudice to resubmission.

SO ORDERED.

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