

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
FRANKIE DWAYNE FOSSETT) CASE NO. 08-20665 JPK
) Chapter 13
Debtor.)

ORDER REGARDING DEBTOR'S MOTION FOR AUTHORITY TO USE INSURANCE
PROCEEDS ("MOTION")

The Motion, which was filed on August 1, 2008, requests two specific forms of relief: First, the "Court's authority and approval to use the proceeds of the insurance check for the repair of his vehicle"; and, second, that the court "require the Creditor to sign said check allowing the Debtor to obtain the necessary repairs." The first request is essentially a request for use of cash collateral, subject to the provision of Fed.R.Bankr.P. 4001(b). The second request seeks essentially equitable relief in the form of an order compelling Midwest Operating Engineers Credit Union to perform an act. As such, the matter which is the subject of this request falls within the provisions of Fed.R.Bankr.P. 7001(7). The use of cash collateral may be sought by means of a motion pursuant to Fed.R.Bankr.P. 9014, while the equitable remedy sought may only be obtained by means of the initiation of an adversary proceeding. Thus, the Motion fails to comply with N.D.Ind.L.B.R. B-9013-1(a), and the request for equitable relief in the form of a motion fails to state a claim upon which any relief may be granted.

The Motion was accompanied by a form of "Notice of Motion and Opportunity to Object", patterned after the "drop-dead" procedure provided for by N.D.Ind.L.B.R. B-2002-2. Neither that Rule, nor any other provision of the Federal Rules of Bankruptcy Procedure or of the Rules of the United States Bankruptcy Court for the Northern District of Indiana, authorizes the use of a "drop-dead" procedure with respect to the relief sought by the Motion. The foregoing Notice is therefore ineffective for any purpose.

The nature of the motion—a request to use proceeds of insurance arising from damage

to the debtor's vehicle in order to repair the vehicle—has some potential urgency. While the Court could entirely deny the Motion, the Court rather chooses to deny that portion of the motion which seeks an equitable remedy and to leave intact that portion of the motion which requests use of cash collateral.

IT IS ORDERED that the Motion is DENIED to the extent that it requests that the Court “require the Creditor to sign said check allowing the Debtor to obtain the necessary repairs”, without prejudice to the initiation of an action with respect to that requested relief in accordance with applicable law and rules.

IT IS FURTHER ORDERED that the Motion will proceed solely with respect to its request for use of cash collateral, and that a Final Hearing will be held on the motion on **September 29, 2008, at 1:00 P.M.**

Dated at Hammond, Indiana on August 27, 2008.

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

Distribution:

Debtor, Attorney for Debtor

Trustee, US Trustee

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