

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:)
)
JASON TODD WRIGHT) CASE NO. 08-40520
)
)
Debtor)

DECISION ON MOTION TO SET ASIDE ORDER

At Fort Wayne, Indiana, on February 17, 2009.

By an order entered on November 7, 2008, this court granted the debtor's motion to redeem a motor vehicle from a lien held by GMAC by paying that creditor the sum of \$1,000. Very soon thereafter, GMAC filed a motion to set aside the court's order, arguing that it had not been properly served. The motion was filed pursuant to Rule 60(b) of the Federal Rule of Bankruptcy Procedure, see, Fed R. Bankr. P. Rule 9024, and was accompanied by a brief in support thereof. See, N.D. Ind. L.B.R. B-9023-1(a). The debtor filed a response to GMAC's motion and the matter is before the court for a decision following a hearing at which the court heard the arguments of counsel.

In bankruptcy proceedings, as in traditional civil litigation, the failure to properly serve the opposing party may justify relieving them of a final order through Rule 60(b). See, Mid-Continent Wood Products, Inc. v. Harris, 936 F.2d 297 (7th Cir. 1991); In re Maloni, 282 B.R. 727, 731-32 (1st Cir. BAP 2002). Here, debtor's counsel served both the motion to redeem and the associated notice of the opportunity to object, see, N.D. Ind. L.B.R. B-2002-2, by first class mail addressed as follows:

GMAC
Attn: Bankruptcy Dept.
P.O. Box 380902
Minneapolis, MN 55438

The question before the court is whether this was proper and, if not, whether it justifies vacating the

court's order.

Section 722 of the Bankruptcy Code gives an individual debtor the opportunity to redeem tangible personal property from a creditor's lien. 11 U.S.C. § 722. The process is initiated by a motion and constitutes a contested matter governed by Rule 9014 of the Federal Rules of Bankruptcy Procedure. The motion must "be served in the manner provided for service of a summons and complaint by Rule 7004." Fed R. Bankr. P. Rule 9014(b). Where service is made upon a corporation by first class mail the papers served are to be mailed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process" Fed. R. Bankr P. Rule 7004(b)(3).

The focus of GMAC's motion is on the second line of the mailing address. Rather than being directed to the attention of an officer, manager or other agent, the motion to redeem was addressed to the attention of GMAC's "Bankruptcy Dept." In response, the debtor argues that service was directed to an address that, prior to the petition, had been designated by GMAC as the address to which correspondence should be sent; that address had been successfully used by debtor's counsel, both prior to and after the petition, to communicate with GMAC concerning the debtor's obligation to it and was the address used on debtor's bankruptcy schedules; GMAC had actual knowledge of the debtor's bankruptcy, had communicated (both by letter and by phone) with debtor's counsel concerning the bankruptcy and the possible reaffirmation of the debtor's debt, and when those negotiations fell through knew that debtor would seek to redeem the vehicle securing its claim; and, finally, GMAC never provided debtor's counsel or the clerk with a different address. All this led debtor's counsel to believe she was dealing with the appropriate representatives of GMAC and, in view of its actual knowledge of the proceeding, should excuse any deficiencies in service.

Debtor's arguments are a bit wide of the mark. This dispute is not about the propriety of the address to which the motion and notice were mailed. It is about who at that address they should have been directed to. Was "Attn: Bankruptcy Dept." sufficient or was something more such as "Attn: Highest Officer or Managing Agent" required?

Rule 7004(b)(3) pretty clearly requires the something more. See e.g., In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004); In re Parker, 392 B.R. 409, 496 (Bankr. D. Utah 2008); In re Braden, 142 B.R. 317, 318-319 (Bankr. E.D. Ark. 1992); In re DaShiell, 124 B.R. 242, 247-48 (Bankr. 1990); In re Lancaster, 2003 WL 109205 (Bankr. D. Idaho 2003). The idea is that service will be made "upon a representative so integrated with the organization that he will know what to do with the papers." In re Butts, 350 B.R. 12, 21 (Bankr. E.D. Pa. 2006). As a result, "addressing the mail to nobody in particular at the corporation does not satisfy the requirement of [Rule 7004(b)(3)]." In re Lolee, 241 B.R. 655, 660 (9th Cir. BAP 1999). While one does not need to address service to a specifically named individual, so that it is sufficient to direct service by reference to a position or title, In re C.V.H. Transport, 254 B.R. 331, 332-33 (Bankr. M.D. Pa. 2000), contra, In re Pittman Mechanical Contractors, Inc., 180 B.R. 453 (Bankr. E.D. Va. 1995), the rule requires more than addressing things to an entire department. Accord, In re Speichert, 2007 WL 4893499 (Bankr. N.D. Ind. 2007)(Klingeberger, J.).

The Seventh Circuit Court of Appeals has expressed a decided preference for strict compliance with the legal requirements concerning the manner in which service is to be made. See, Mid-Continent Wood Products, Inc. v. Harris, 936 F.2d 297, 301 (7th Cir. 1991). Substantial compliance is not enough. Neither will the opposing party's actual knowledge of the action and/or communication concerning it cure deficiencies in service. Unless service was properly made, the

court's order should be set aside. See, Id.

GMAC's motion to set aside the court's order of November 7, 2008 is GRANTED and an appropriate order doing so will be entered.

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