

Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 06-11678)	
)	
STEPHEN A. MASON)	
JANE MASON)	
)	
Debtor)	
)	
)	
STEPHEN A. MASON)	
JANE MASON)	
)	
Plaintiffs)	
)	
vs.)	PROC. NO. 09-1163
)	
SOVEREIGN BANK)	
REAL TIME SOLUTIONS)	
)	
Defendants)	

DECISION AND ORDER

At Fort Wayne, Indiana, on January 20, 2010.

Plaintiffs' motion for a default judgment as to Real Time Solutions, Inc, filed on January 8, 2010, is DENIED. To begin with, there is no return demonstrating service of the summons and complaint upon that party.¹ Although the motion says that service was made on November 25, 2009, by that date the original summons had expired, Fed. R. Bankr. P. Rule 7004(e) (summons must be mailed within 10 (now 14) days after being issued), and it was not until December 3 that any alias summons was issued. Furthermore, the court has substantial doubts whether Real Time Solutions has been properly joined as a party to this proceeding. The original complaint named Sovereign

¹Plaintiff previously sought a default judgment as to the originally named defendant, Sovereign Bank, which was denied for inadequate service by an order issued on November 18, 2009.

Bank as the only defendant. An amended complaint was filed on November 25 which changed the identity of the named defendant from the bank to Real Time Solutions, but the court never formally authorized the change; a change which would seem to require both a motion and leave of court. See, 6 Wright & Miller, Federal Practice and Procedure, Civil 2d § 1479 (an amended pleading altering the parties requires leave of court, as prescribed in Rule 21, even though it is filed before a responsive pleading is served). See also, Fed. R. Civ. P. Rule 25(c) (if an interest is transferred, an action may be continued by or against the original party, unless the court, on motion, orders substitution of the transferee).

SO ORDERED.

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