

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
PETER DOUGLAS STURGEON,) CASE NO. 10-23493 JPK
) Chapter 13
Debtor.)

ORDER FOR HEARING REGARDING MOTION
TO AVOID JUDICIAL LIEN ON REAL ESTATE ("MOTION")

The Motion was filed on the debtor, by counsel, on September 15, 2010. This Motion states that it seeks to avoid a judicial lien obtained by Adolph Battista. In response to this motion, the court issued orders directing counsel to file evidence of compliance with N.D.Ind.L.B.R. B-2002-2(a), and a certificate of service regarding service of the Motion itself. Counsel for the debtor responded to these two orders. On September 23, 2010, a motion which appears to be identical to that filed on September 15, 2010 was filed, and the court has no clue as to the reason for the apparent duplicate filing.

First, there is the problem of the above-noted duplicate filing. Second, the court is unable to tell whether service has been properly effected upon the lien claimant, who is described in the certificate of service as being somehow connected to "All America Builders" – if this is an entity apart from the sole proprietorship, then service of the Motion must be effected pursuant to Fed.R.Bankr.P. 9014(b)/7004(b)(3) – which has not been done. Third, the form of notice of the Motion states that the Motion was filed on September 16, 2010, which is inaccurate: the first motion was filed on September 15, 2010. Next, the Motion states that the date of the effectiveness of the lien is unknown. This is an unacceptable practice on the part of the debtor's counsel, because if the judgment was entered post-petition, it is not effective at all to provide a lien, and if it was entered pre-petition, then the date should be known to the debtor's counsel to appropriately take action with respect to it. Finally, paragraph 4 of the duplicate motion states that the "debtor's interest in the property [to which the lien apparently

refers] has been fully surrendered to the judgment creditor previous to filing of this bankruptcy case". If the property has in fact been surrendered, then it is no longer property of the estate and 11 U.S.C. § 522(f) is inapplicable.

Suffice it to say, there are numerous issues with respect to the motions filed on September 15, 2010 and September 23, 2010.

IT IS ORDERED that a hearing will be held on **January 24, 2011, at 1:00 P.M.** to sort out the matters addressed above.

Dated at Hammond, Indiana on December 16, 2010.

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

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee