

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
RICHARD MARTIN WHITMORE and)
CYNTHIA CAROL WHITMORE,) CASE NO. 09-23596
) Chapter 13
Debtors.)

ORDER DENYING MOTION

On November 8, 2010, a Debtors Motion to Avoid Mortgage Lien of HSBC Mortgage Services, Inc., was filed by the debtors by counsel, accompanied by a form of “drop-dead” notice in the nature of that provided for by N.D.Ind.L.B.R. B-2002-2.

First, the nature of the relief requested by the Motion is not within the scope of matters provided for by N.D.Ind.L.B.R. B-2002-2, and that notice is void and ineffective for any purpose.

More importantly, the Motion is premised upon 11 U.S.C. § 522(f)(1)(A). That section provides a mechanism for avoidance of a judicial lien to the extent that the lien impairs an exemption to which debtors are entitled. A mortgage lien is not a judicial lien subject to the provisions of Section 522(f). The “stip down” sought to be effected by the motion requires an adversary proceeding pursuant to Fed.R.Bankr.P. 7001(2).

IT IS ORDERED that the Motion is Denied, without prejudice.

Dated at Hammond, Indiana on December 22, 2010.

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

Distribution:

Debtor, Attorney for Debtor
Trustee, US Trustee

HSBC Mortgage Services Inc., 636 Grant Regency Blvd., Brandon FL 33510
Registered Agent: CT Corporation System 251 E. Ohio St. Suite 1100, Indianapolis IN 46204
Highest Ranking Executive Officer HSBC Bank USA, NA, 1800 Tysons Blvd, McLean VA 22102
Brice, Vander Linden & Wernick PC, 9441 LBJ Freeway, Suite 350, Dallas TX 75243