

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
EDWARD W SAYETTA, JR.,) CASE NO. 11-24602 JPK
) Chapter 13
Debtor.)

ORDER REGARDING MOTION FOR PERMENANT (SIC) IN REM
RELIEF FROM STAY AND FOR ABANDONMENT OF
REAL ESTATE OF PROPERTY LOCATED AT
510 N. 300 E., VALPARAISO, IN 46383 ("MOTION")

The Motion was filed by 1st Source Bank, by counsel, Curt Hochbein, on February 17, 2012. As evidenced by record entry #20, a form of "drop dead" notice in the form provided for by N.D.Ind.L.B.R. B-2002-2 was utilized by counsel with respect to the Motion.

First, there is no provision in any statute or federal rule of bankruptcy procedure, or in the rules of procedure of the United States Bankruptcy Court for the Northern District of Indiana, which allows for the use of a "drop dead" notice with respect to a motion for stay relief in the Chapter 13 case, with one exception. That exception is stated in N.D.Ind.L.B.R. B-4001-1(b), a "drop dead" procedure with respect to property stated to be surrendered by a debtor's Chapter 13 plan in a circumstance in which the plan has yet to be confirmed. However, that procedure requires a specifically designated title in the motion. Because this Motion does not comply with the provisions of N.D.Ind.L.B.R. B-4001-1(b)(1), the movant cannot take advantage of that provision.

The Motion goes further than requesting stay relief or abandonment: it requests a form of injunctive relief. An injunction of the nature of that requested by the Motion cannot be effected by a motion, but rather must be the subject of an adversary proceeding pursuant to Fed.R.Bankr.P. 7001(7). By combining the request for injunctive relief in a motion format, the motion seeks a remedy which the court cannot grant, and therefore essentially fails to state a claim upon which relief can be granted.

IT IS ORDERED that the notice included in record entry #20 is void for all purposes.

IT IS FURTHER ORDERED that the Motion is denied, without prejudice.¹

Dated at Hammond, Indiana on March 2, 2012.

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

Distribution:

Debtor, Attorney for Debtor
Trustee, US Trustee
Attorney for Creditor

¹ Counsel whose offices are not in the Northern District of Indiana are ardently encouraged to read and digest the local rules of the United States Bankruptcy Court for the Northern District of Indiana before they embark on practicing in this court. If that exercise had been accomplished in this case, it would have saved counsel for 1st Source Bank some embarrassment, and the Court and its staff time which could better be spent elsewhere. Counsel is advised that the court's customary procedure with respect to the unauthorized use of a "drop dead" notice with respect to a motion of this nature is to require counsel to personally appear before the court to show cause why sanctions should not be imposed upon him/her pursuant to Fed.R.Bankr.P. 9011. The court will not invoke its customary procedure in this case, because it assumes that this order will have the same effect as to future conduct.