

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
SHANE ALLEN MILLER ) CASE NO. 05-10507  
CARRIE JO KENNEDY MILLER )  
 )  
Debtors )

**DECISION AND ORDER**  
**ON MOTION TO AVOID LIEN**

At Fort Wayne, Indiana, on July 18, 2005.

The debtors filed a motion to avoid a judicial lien, pursuant to 11 U.S.C. § 522(f). The lien in question is held by First Federal Savings Bank (hereinafter “the Bank”). The certificate of service filed with regard to the motion shows that it was served by first-class mail on June 14, 2005. There have been no objections to the motion within the time required, see, N.D. Ind. L.B.R. B-2002-2(b)(2), and the matter is, therefore, before the court.

A motion to avoid a lien initiates a contested matter governed by Bankruptcy Rule 9014. Fed. R. Bankr. P. Rule 4003(d). The motion should “be served in the manner provided for service of a summons and complaint by Rule 7004.” Fed. R. Bankr. P. Rule 9014. In most instances, Rule 7004 authorizes service by first-class mail. See, Fed. R. Bankr. P. Rule 7004(b). Where, however, the entity affected by the motion is an “insured depository institution” (as defined by section 3 of the Federal Depository Insurance Act), service by first-class mail under Rule 7004(b) is not an option. Instead, service of process is governed by Bankruptcy Rule 7004(h). Subsection (h) requires that service “shall be made by certified mail addressed to an officer of the institution unless –” one of three specific exceptions applies. See, Fed. R. Bankr. P. Rule 7004(h)(1) thru (3).

The certificates of service submitted in connection with both the motion and the notice

indicate that the Bank was served by first class mail. Since service was not made by certified mail, the requirements of Rule 7004(h) have not been met, unless one of the three stated exceptions applies. Of them, the last two are clearly inapplicable. Nothing in the court's file indicates that it has authorized service by first-class mail, Fed. R. Bankr. P. Rule 7004(h)(2), and the Bank has not filed a written waiver of its right to service by certified mail. Fed. R. Bankr. P. Rule 7004(h)(3). The only other exception which would permit service by first-class mail is Rule 7004(h)(1). If the institution has appeared by an attorney, this exception permits service by first-class mail on the attorney. Fed. R. Bankr. P. Rule 7004(h)(1). Nonetheless, the court's review of the docket and record in this case has found no appearance filed by any attorney on behalf of the Bank. Therefore, service of the debtors' motion is defective because the debtors failed to serve the bank by "certified mail addressed to an officer of the institution . . ." Even if the Bank received actual notice of the debtors' Motion to Avoid Lien, this would not remedy the lack of valid service of process. Mid-Continent Wood Products, Inc. v. Harris, 936 F.2d 297, 300 (7th Cir. 1991).

The debtors have failed to serve the motion to avoid lien as required by the Bankruptcy Rules. Consequently, the motion is DENIED without prejudice to resubmission.

SO ORDERED.

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