

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
RAFAEL CRUZ, JR. and) CASE NO. 02-62928 JPK
MELBA CRUZ,) Chapter 13
)
Debtors.)

ORDER REGARDING DEFECTIVE SERVICE

On October 11, 2005, the debtors, by counsel, filed a Motion to Determine Secured Status with respect to creditor Homecomings Financial Network. No certificate of service is attached to the motion, and therefore there is no evidence this motion has ever been served upon anyone. The Notice filed with the Court on October 11, 2005 states that it was served upon the creditor entity at a Post Office Box, and upon attorneys, presumably those who represented the creditor in matters in which the debtors were involved. Be that as it may, service of the motion and of the required notice has not been effected pursuant to Fed.R.Bankr.P. 7004(b)(3), and thus, the Court has no *in personam* jurisdiction over the creditor.

In reviewing the motion with respect to matters other than its service, the Court notes that the debtors' Chapter 13 plan, which was confirmed without objection from Homecomings Financial Network, states expressly that the second mortgage of that creditor is affected by the plan, as follows:

THIS PLAN MODIFIES THE RIGHTS OF HOMECOMINGS UNDER THE SECOND MORTGAGE ON DEBTORS' RESIDENCE. THIS CLAIM IS TREATED AS COMPLETELY UNSECURED. (emphasis in original).

The Court also notes curiously that Homecomings Financial Network filed a proof of claim on October 29, 2002 as claim #7; this claim states an indebtedness of \$137,993.83 as totally unsecured.

While the debtors used the "drop dead" procedure of N.D.Ind.L.B.R. B-2002-2, the requested relief is essentially a motion pursuant to Fed.R.Bankr.P. 3012, and as such is not covered by the provisions of N.D.Ind.L.B.R. B-2002-2. Thus, upon proper service of the motion upon the creditor, the Court will schedule a hearing on the debtors' motion, and the Court will provide notice to the creditor at the address at which it was served of the hearing.

IT IS ORDERED that the Court will take no action with respect to the debtors' motion until evidence of proper service upon the creditor has been filed.

Dated at Hammond, Indiana on November 18, 2005.

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

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee