

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JERRY A. EVERLY) CASE NO. 05-14473
CAROL J. EVERLY)
)
Debtors)

DECISION AND ORDER

At Fort Wayne, Indiana, on April 17, 2006.

On March 8, 2005, the debtors filed a motion to avoid the lien of First National Bank and Trust (hereinafter “the Bank”) pursuant to 11 U.S.C. § 522(f). Notice of the motion has been given to the lienholder and there has been no objection thereto. Despite the fact that the motion is unopposed, the court cannot properly grant it, because it was not accompanied by a certificate of service indicating to whom it may have been sent or when it was served. N.D. Ind. L.B.R. B-9013-4.¹ Thus, the court is unable to determine if and when the creditor was served.

Motions to avoid judicial liens initiate contested matters governed by Bankruptcy Rule 9014, Fed. R. Bankr. P. Rule 4003(d), and should “be served in the manner provided for service of a summons and complaint by Rule 7004.” Fed. R. Bankr. P. Rule 9014. When the entity affected is an “insured depository institution” (as defined by section 3 of the Federal Depository Insurance Act), Rule 7004(h) requires that service “shall be made by certified mail addressed to an officer of the institution unless” the Bank has authorized service by first-class mail or an attorney has filed an

¹Furthermore, the certificate of service accompanying the notice indicates that the notice was not served on the creditor whose lien is sought to be avoided, but only on an attorney who has not filed on appearance on behalf of the lienholder in this case. This is not appropriate. *In re Rae*, 286 B.R. 675 (Bankr. N.D. Ind. 2002). The same rules regarding service on insured depository institutions apply to the notice of the motion, as well as to the motion itself.

appearance on behalf of the bank. See, Fed. R. Bankr. P. Rule 7004(h)(1)-(3). Neither of those exceptions appear to apply here.

The debtors have failed to properly serve both the motion to avoid the bank's lien and notice of the opportunity to object thereto. Consequently, the motion to avoid the lien of First National Bank and Trust is DENIED without prejudice to resubmission.

SO ORDERED.

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