

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
LINDA TORRES,) CASE NO. 04-66085 JPK
) Chapter 7
) Debtor.)

CALVIN D. HAWKINS,)
) Plaintiff,)
) v.) ADVERSARY NO. 06-6010
LINDA TORRES LEE,)
) Defendant.)

ORDER DISMISSING ADVERSARY PROCEEDING

This adversary proceeding exemplifies the need to carefully read the Court's dockets prior to undertaking action in a case.

This adversary proceeding was initiated by a complaint filed on January 13, 2006. The certificate of service upon the debtor/defendant filed on January 13, 2006 states that service of the summons and complaint was made upon her at 5950 Washington Street #3F, Merrillville, Indiana 46410. The predicate for this action to revoke the debtor's/defendant's discharge is her failure to comply with a turnover order entered by the Court on December 27, 2005, in response to a motion for turnover filed by the Trustee on November 17, 2005. The certificate of service of this motion states that it was served upon the debtor at 5950 Washington Street #3F, Merrillville, Indiana 46410.

The record in the debtor's Chapter 7 case [case number 04-66085] demonstrates that the debtor filed an amended petition on January 18, 2005, by which her residence address was changed from that stated in the original petition [5950 Washington Street #3F, Merrillville, Indiana 46410] to 1798 Roosevelt, Gary, Indiana 46404. The docket record in the case states the debtor's address as this latter address, and has done so for quite some time. While perhaps – indeed almost certainly – not done in compliance with Fed.R.Bankr.P. 4002(5) and/or N.D.Ind.L.B.R. B-1009-1(a) and (c), the amended petition was effective to cause the debtor's

designated address for service of process to be changed to that stated in the amended petition, thus requiring service upon the debtor at that address pursuant to Fed.R.Bankr.P. 7004(b)(9). Thus, service of process upon the debtor has not yet been made, and the Court has acquired no personal jurisdiction over the debtor/defendant.

The predicate for this action is a turnover order premised upon a motion which was also served at an incorrect address for the debtor, and thus upon a turnover order which is invalid. A separate order will be entered on the docket of the main case vacating the order for turnover upon which this adversary proceeding is premised.

Because the turnover order upon which this adversary proceeding is based is invalid, the Trustee will have to begin again with a motion for turnover served upon the debtor at the address stated in the amended petition, which also appears at the top of the Court docket record. It would be possible to allow this adversary proceeding to continue to pend until determination was made of the debtor's compliance with the turnover order to be generated by the motion when properly served, but that would then require essentially the same acts of serving process as would be required by a new adversary proceeding. The Trustee will not be prejudiced with respect to the subject matter of this action if this adversary proceeding is dismissed because the case has remained open throughout his administration of it; See, *11 U.S.C. § 727(e)(2)(B)*.

The Court finds that this adversary proceeding should be dismissed without prejudice.

IT IS ORDERED, ADJUDGED AND DECREED that the complaint filed by the Trustee in this adversary proceeding is dismissed without prejudice, and that this adversary proceeding shall be closed.

Dated at Hammond, Indiana on May 31, 2006.

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

Distribution:
Attorney for Plaintiff