

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
SHARON M. SHAMEL,) CASE NO. 05-62793 JPK
) Chapter 7
Debtor.)

ORDER REGARDING MOTION TO AVOID JUDICIAL LIEN
ON REAL ESTATE CONCERNING CAPITAL ONE

On August 22, 2005, the debtor, by counsel, filed a Motion to Avoid Judicial Lien on Real Estate which requested lien avoidance pursuant to 11 U.S.C. § 522(f) with respect to Trustmark. The Court entered an order on September 23, 2005, which determined that service of process of the motion on Trustmark was not in accordance with applicable law and procedures, and which as a result denied that motion without prejudice to the debtor's filing of a motion which evidenced proper service of the motion and the notice required by N.D.Ind.L.B.R. B-2002-2(a) upon the creditor. The debtor's counsel has taken no action with respect to the Court's September 23, 2005 order.

It has come to the Court's attention that on August 2, 2006, the debtor's counsel called the Clerk's Office regarding the status of a motion purportedly filed by the debtor with respect to Capital One. The Court's docket does not reflect that this motion was ever filed. Investigation by the Court indicates that there is a Motion to Avoid Judicial Lien on Real Estate in existence with respect to a judicial lien allegedly held by Capital One, file-stamped by the Clerk of the United States Bankruptcy Court for the Northern District of Indiana as having been filed on August 22, 2005. The Clerk's Office has advised the Court that the procedure with respect to the filing of this motion would have been that the motion would have been file-stamped at its presentation at the counter of the Clerk's Office on August 22, 2005, and that then the person presenting the motion would have been directed to scan the motion into the Court's record at the Clerk's Office. It appears that the motion was not properly scanned into the record by whomever presented it to the Clerk's Office for filing on August 22, 2005. There is thus nothing in the record before the Court

with respect to a Motion to Avoid Judicial Lien on Real Estate with respect to a judicial lien allegedly held by Capital One.

Whatever the reason for the failure of the foregoing motion to appear on the Court's record, matters relating to that motion suffer from the same infirmity identified by the Court in its September 23, 2005 order with respect to a similar motion filed concerning an alleged judicial lien held by Trustmark. Moreover, the Court now notes a deficiency in the Notice of Motion and Opportunity to Object docketed as record entry #13 with respect to Trustmark: paragraph 2 of the notice states that objections are to be sent to the Chapter 7 Trustee. The form of notice is thus defective, in that objections should be sent to the party responsible for the objection, i.e., counsel for the debtor. Thus, the form of notice utilized with respect to either or both of the foregoing motions under 11 U.S.C. § 522(f) is defective.

The Court finds that whatever the circumstances which caused the Motion to Avoid Judicial Lien on Real Estate filed by debtor's counsel [or not properly filed by debtor's counsel] on August 22, 2005 to not appear on the record, that motion would be denied for the same reasons stated in the Court's order of September 23, 2005 with respect to a similar motion filed concerning Trustmark. In addition, the Court finds that the form of notice utilized under N.D.Ind.L.B.R. B-2002-2(a) with respect to both motions is defective, in that the designation of the person upon whom objections to the motion are to be served is incorrect.

IT IS ORDERED that the Motion to Avoid Judicial Lien on Real Estate with respect to Capital One is denied, without prejudice to the debtor's filing of a subsequent motion, and notice pursuant to N.D.Ind.L.B.R. B-2002-2(a), in accordance with applicable law and procedures.

IT IS FURTHER ORDERED that the order of September 23, 2005 with respect to the Motion referred to in that order stands, and has not been addressed by the debtor.

Dated at Hammond, Indiana on August 16, 2006.

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

Distribution:
Debtor, Attorney for Debtor, Trustee, US Trustee